

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAUL LEVY,

Plaintiff,

v.

LAW OFFICES OF J. HENRY NIERMAN;
J. HENRY NIERMAN; and
RECOVERY OF JUDGMENT LLC,

Defendants.

Case No.: 17-cv-4022 (NSR) (JCM)

DECLARATION OF EVAN S. ROTHFARB

Evan S. Rothfarb, an attorney duly licensed to practice law in the State of New York and admitted to practice in this Court, does hereby affirm under the penalty of perjury:

1. I am an attorney at Schlanger Law Group, LLP, counsel for Plaintiff and, as such, am familiar with the facts and documents relevant to this dispute.

2. I make this declaration in opposition to the motion for summary judgment by Defendants Law Offices J. Henry Nierman (“LOHN”), J. Henry Nierman (“Nierman”) and Recovery of Judgment, LLC (“ROJ” and together with LOHN and Nierman, “Defendants”) (the “Motion”), and in support of Plaintiff’s cross-motion for summary judgment pursuant to Fed. R. Civ. P. 56 (the “Cross Motion”). For the reasons below, the Court should deny Defendants’ Motion and grant Plaintiff’s Cross Motion.

PROCEDURAL HISTORY

3. On December 12, 20107, Plaintiff entered into a Flat Fee Retainer Agreement and incurred \$3,000 in fees paid for legal services from the undersigned’s law firm to defend against Defendants’ debt collection efforts. Collectively attached hereto as Exhibit “A” is a true and correct copy of the Flat Fee Retainer Agreement.

4. Plaintiffs commenced this action on May 30, 2017 alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and New York General Business Law § 349 (“GBL 349”). (*See* Dkt. No. 1).

5. The Summons and Complaint were personally served on defendants J. Henry Nierman and Law Offices of J. Henry Nierman on July 12, 2017 and Defendants J. Henry Nierman and Law Offices of J. Henry Nierman did not timely answer or otherwise move with respect to the Complaint.

6. The Summons Complaint were served on the authorized agent for Defendant Recovery of Judgment LLC on July 7, 2017. Recovery of Judgment LLC did not timely answer or otherwise move with respect to the Complaint.

7. On September 15, 2017, Plaintiff submitted a request for entry of default against all Defendants. (*See* Dkt. No. 19).

8. On September 22, 2017, Clerk’s Certificates of Default were issued for each Defendant. (*See* Dkt. Nos. 20 - 22).

9. On January 3, 2018, by order to show cause, Plaintiff moved for default judgment against Defendants. (*See* Dkt. Nos. 24 - 27).

10. On April 20, 2018, at the Show Cause Hearing of Plaintiff’s application for default judgment, counsel appeared for Defendants. The Court, among other things, ordered Defendants’ counsel to file an appropriate appearance for each Defendant and to serve and file a motion seeking leave to late file an answer. The Show Cause Hearing of Plaintiff’s application for default judgment was adjourned until May 31, 2018. (*See* Dkt. No. 19).

11. On May 16, 2018, Defendants filed their motion for leave to late file an answer to Plaintiff’s Complaint. (*See* Dkt. Nos. 32 - 35).

12. On January 8, 2019, the Court issued its orders on the parties competing motions denying Plaintiff's Motion for Default Judgment and granting Defendants' motion to late file their answers. (*See* Dkt. No. 43).

13. On February 8, 2019, Defendants filed their answers. (*See* Dkt. Nos. 44 - 47).

14. On January 30, 2020, the Court issued a scheduling order. (*See* Dkt. No. 52).

15. Thereafter, Plaintiff made repeated applications and motions for the Court's intervention to compel Defendants' discovery compliance. (*See, e.g.*, Dkt. Nos. 53, 64 and 66).

16. Through the testimony of defendant Nierman, appearing on behalf of all Defendants, on September 29, 2020, Plaintiff conducted Defendants' deposition. A Copy of the transcript of Nierman's deposition is annexed hereto as Exhibit "B."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAUL LEVY,

Plaintiff,

v.

LAW OFFICES OF J. HENRY NIERMAN;
J. HENRY NIERMAN; and
RECOVERY OF JUDGMENT LLC,

Defendants.

Case No.: 17-cv-4022 (NSR) (JCM)

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 16, 2021

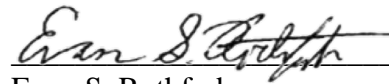

Evan S. Rothfarb

EXHIBIT A

Kakalec & Schlanger, LLP

DEDICATED TO MARKETPLACE JUSTICE

December 20, 2016

VIA EMAIL [REDACTED]

Shaul Levy
[REDACTED]

Re: *Matt Morrison v. Shaul Levy*
Index: 056136/2010 (New York Civil)

Dear Mr. Levy:

This letter sets forth our agreement regarding Kakalec & Schlanger, LLP's representation of you in the above-referenced matter, including our agreement regarding payment of the firm's fees.

1) Scope of Representation. We will represent you in attempting to have the judgment taken against you in the above-referenced matter vacated and the case dismissed. As appropriate, we will also negotiate on your behalf to attempt to reach a mutually acceptable settlement with the judgment creditor. This agreement does not cover any services other than those indicated here. It does not cover our representation of you on any appeal, or, for example, in an affirmative claim under the Fair Debt Collection Practices Act. Any such representation will have to be covered in a separate retainer agreement.

2) Our Fees: Our fee for representing you with regard to the services referenced in Paragraph 1, above, is \$3000.00 if we are able to achieve a settlement in the matter without litigation beyond the filing of a motion to vacate (e.g. for lack of service). The flat fee of \$3000.00 is to be paid as follows: \$1000.00 upon execution of this agreement; \$1000.00 on February 1, 2017; and \$1000.00 on March 1, 2017. My office will be in touch to get credit card information and we will use the credit card information you provide to make the payments on the dates indicated herein. As part of the service covered under the flat fee, we will file a notice of appearance and motion to vacate the judgment. We will also, if necessary, file a reply to any opposition to the motion and will appear on your behalf at any court hearing on the motion. However, if we are required to substantively litigate the matter (including discovery, motion practice, hearings, and/or trial) beyond this, you agree to pay us at our customary hourly rates in addition to the flat fee above. Based on my experience with other cases of this type, I believe it unlikely that any work at our hourly rates will be necessary. In any event, we will consult with you and obtain your authorization before performing any work that would be billed at our hourly rates. Our customary hourly rates are as follows:

Personnel	Rate
Partners	\$420-\$550/hour
Associates	\$300-\$390/hour
Paralegals/Support Staff	\$100-\$150/hour

Travel time is billed at one half Attorneys' regular hourly rates.

3) Costs and Disbursements. In addition to charges for legal services rendered, certain costs and disbursements will be incurred in the handling of this matter. These costs and disbursements may include postage, printing, photocopying, fees to access online legal databases (e.g. Westlaw, Pacer), tolls and mileage, etc. You authorize us to incur and advance reasonable and necessary costs and expenses in the preparation of your matter and/or litigation of your claim. You agree that costs and expenses totaling \$200.00 (two hundred dollars) or less to be charged to your credit card on file without further consent. In the unlikely event that costs and disbursements exceed \$200.00, we will obtain your prior authorization before incurring the cost.

4) Acceptance of Settlement Offers. We will not make any settlement or compromise of any nature of any of your claims without your prior approval. You retain the right to accept or reject any settlement. You agree not to make any settlement or compromise of any nature of any of your claims without prior notice to us.

5) Termination of Representation. Our representation of you in this matter terminates upon settlement of this matter, or such other circumstances develop which make it necessary or appropriate that our attorney-client relationship be severed, such as a disagreement or a conflict of interest.

6) Fee Disputes. If you and the firm have any differences regarding the firm's fees, please know that the firm is obligated by New York law to arbitrate our differences before the firm is able to enforce this agreement. In such event, we would provide you with a full and complete explanation of the applicable arbitration rules.

7) Lien. You grant our firm an enforceable lien for its fees, costs and disbursements against the proceeds of any future settlement, arbitration award or judgment related to this matter.

8) No Guarantee. You understand that we cannot and have not promised or guaranteed any particular result in this matter.

9) Entire Agreement. This agreement contains the entire agreement between you and our firm. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

10) Signatures. This agreement may be signed in counterparts. Facsimile and digital signatures are to be treated as originals.

11) Modification. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

12) Receipt of Attachments. You acknowledge the receipt of the following attachments: Statement of Client's Rights (Attachment 1) and; the Acknowledgement of Client Obligations Regarding Preservation of Evidence (Attachment 2).

We look forward to working with you on this matter towards an acceptable conclusion.

Very truly yours,

Kakalec & Schlanger, LLP

By: s/Daniel A. Schlanger
Daniel A. Schlanger

Reviewed, understood and agreed to by:



Shaul Levy

12/22/2016

Date

(Attachment 1)
STATEMENT OF CLIENT'S RIGHTS

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and nonlawyer personnel in your lawyer's office.
2. You are entitled to have your attorney handle your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to discharge your attorney and terminate the attorney-client relationship at any time. (Court approval may be required in some matters, and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge.)
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged reasonable fees and expenses and to have your lawyer explain before or within a reasonable time after commencement of the representation how the fees and expenses will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any arrangement for fees and expenses that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.
5. You are entitled to have your questions and concerns addressed promptly and to receive a prompt reply to your letters, telephone calls, emails, faxes, and other communications.
6. You are entitled to be kept reasonably informed as to the status of your matter and are entitled to have your attorney promptly comply with your reasonable requests for information, including your requests for copies of papers relevant to the matter. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter and make informed decisions regarding the representation.
7. You are entitled to have your legitimate objectives respected by your attorney. In particular, the decision of whether to settle your matter is yours and not your lawyer's. (Court approval of a settlement is required in some matters.)
8. You have the right to privacy in your communications with your lawyer and to have your confidential information preserved by your lawyer to the extent required by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the New York Rules of Professional Conduct.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

Received by: 
Shaul Levy

12/22/2016
Date

(Attachment 2)

CLIENT ACKNOWLEDGMENT OF:

- OBLIGATION TO PRESERVE ALL EVIDENCE
- OBLIGATION TO PROMPTLY PROVIDE ALL EVIDENCE TO KAKALEC & SCHLANGER, LLP
- ADVICE NOT TO DISCUSS CASE IN SOCIAL MEDIA OR OTHER ONLINE & OFFLINE PUBLIC FORA

I. YOU HAVE A DUTY TO PRESERVE ALL EVIDENCE REGARDING THIS LAWSUIT AND THE UNDERLYING DISPUTE

Be advised that you have a duty to preserve all evidence regarding the facts of the lawsuit and the dispute or other situation that underlies this lawsuit. Here is a non-exhaustive list of the types of materials you may have that could be evidence.

- | | |
|----------------------|---------------------------------|
| • Contracts | • Witness statements |
| • Receipts | • Logs |
| • Repair Orders | • Diary entries |
| • Advertisements | • Phone records |
| • Letters | • Text messages |
| • Emails | • Audio Recordings |
| • Faxes | • Spreadsheets |
| • Social media posts | • Notes regarding conversations |
| • Prior drafts | |

This is a general list, and is merely provided to give examples. Some cases will not involve all of these types of evidence. Other cases will involve types of evidence that are not on this list. What constitutes evidence will obviously depend on the type of dispute involved, and the particular circumstances.

The general principle, however, is that you must preserve all data of any type (including but not limited to paper records, electronic or digital data on a computer, cell phone, voice messaging system, or other communication or data storage device) relating to the lawsuit or the facts that make up the lawsuit.

Electronic documents and the storage media on which they reside may contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, you must retain all documents in their electronic form along with information about those documents contained on the media.

In many cases, there may also be tangible things that are not “data” in the traditional sense, but that are nonetheless relevant. For example, in a case involving a defective product purchased by a consumer, the product itself is likely to be evidence, and must be preserved.

You have a duty to preserve and not interfere with the evidence in any manner. For example, you may not edit, damage or delete evidence. Courts have become increasingly strict about preservation issues. Failure to preserve discovery material can result in adverse consequences for your lawsuit, up to and including possible dismissal of this lawsuit, and can also result in an order for you to pay Defendant's attorneys' fees and costs or other significant financial

penalties. Failure to preserve evidence may also result in different or additional sanctions by the Court. This is true even if you did not damage the evidence maliciously but only through carelessness or confusion about whether it was or was not relevant to the litigation.

If you are at all unsure about whether something (say, an email, a receipt, a voicemail, a hard drive, etc.) is related to this lawsuit and must be preserved, always err on the side of preserving the item.

Certain types of computer (or tablet or smart phone) “maintenance” (e.g. “de-fragmenting hard drives, deleting internet cookies, deleting browser history, running “disk clean-up” processes, etc.) can result in damaging or deleting certain types of evidence. In many cases, there will be no issue with conducting these types of maintenance procedures, but in other cases these procedures may result in spoliation of evidence. As a result, please contact Kakalec & Schlanger, LLP prior to conducting any of these types of procedures.

By signing below, you hereby affirm that you have been given notice and agree not to, destroy, conceal or alter any paper or electronic files and other data or evidence of any kind that is in your possession or control, including data that is on your computers, phones, smart phones, tables, back-up drives, and storage media (e.g., hard disks, floppy disks, backup tapes, Zip cartridges, CDs, DVDs, etc.). The phrase “possession or control” is to be interpreted broadly, and to name but one scenario, includes data stored “in the cloud” by a third party vendor on your behalf.

II. YOU MUST PROMPTLY PROVIDE ALL EVIDENCE TO KAKALEC & SCHLANGER, LLP

Just as important, *you must provide Kakalec & Schlanger, LLP with all of this evidence as soon as possible.* If you are unclear on whether you have previously provided us with a given document or other data or evidence (e.g. during an initial consultation), you should err on the side of providing it to us again. By signing below, you hereby agree to promptly provide us with all of the various discovery materials relevant to your case, including but not limited to any of the types of evidence referenced in this letter.

If you are unsure regarding your obligation to preserve evidence or your obligation to provide evidence to Kakalec & Schlanger, LLP, please feel free to consult us.

III. WE ADVISE YOU NOT TO MAKE COMMENTS ON SOCIAL MEDIA OR IN OTHER PUBLIC FORA REGARDING YOUR CASE

We advise you not to publically comment regarding this lawsuit. This includes refraining from making comments on social media, to the press, and even to friends and extended family. These statements may be discoverable and can sometimes be used to advantage by the other side in the litigation.

The safest course is to simply avoid discussing the case with anyone but your attorneys and spouse.

Our advice in this regard does not change the fact that you must not delete or edit any comments on any social media that you may have already made regarding this lawsuit. As already stated, any of your comments on social media regarding the lawsuit or the conduct leading up to the lawsuit may be discoverable, and therefore, you must take steps to preserve such information.

Prior to signing, please inform us whether you have any questions or concerns about any of the issues discussed in this letter.

Very truly yours,

s/Daniel A. Schlanger

Daniel A. Schlanger

Reviewed, understood and agreed to by:



Shaul Levy

12/22/2016

Date



Audit Trail

TITLE	Shaul Levy Flat Fee Retainer Agreement, 12-20-2016.pdf
FILE NAME	RackMultipart20161221-19-1asqlfq.pdf
DOCUMENT ID	a40660a9f2c61faf6ddd1d1e52707d4cc155398e
STATUS	● Completed

This document was requested and signed on lexicata.com

Document History



 SENT	12/21/2016 18:35:00 UTC	Sent for signature to Shaul Levy [REDACTED] IP: 77.138.104.228
 VIEWED	12/22/2016 14:01:25 UTC	Viewed by Shaul Levy [REDACTED] IP: 107.220.100.67
 SIGNED	12/22/2016 14:02:25 UTC	Signed by Shaul Levy [REDACTED] IP: 107.220.100.67
 COMPLETED	12/22/2016 14:02:25 UTC	The document has been completed.

EXHIBIT B

1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT NEW YORK

4 -----X

5 SHAUL LEVY,

6 Plaintiff,

7 Civil Action No. 17-cv-4022

8 -against;

9 LAW OFFICES OF J. HENRY NIERMAN, RECOVERY OF

10 JUDGMENT LLC and JOSEPH NIERMAN

11 Defendants.

12 -----X

13
14
15 DEPOSITION OF JOSEPH NIERMAN, ESQ.

16 (Appearing Virtually)

17 Tuesday, September 29, 2020

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24 Reported by: Leonora L. Walker, Court Reporter

25 JOB NO. 184704

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September 29, 2020

11:20 a.m.

Deposition of JOSEPH NIERMAN, ESQ.,
held virtually, before Leonora L. Walker, a
Notary Public of the State of New York.

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A P P E A R A N C E S:

SCHLANGER LAW GROUP

Attorneys for Plaintiff,

80 Broad Street

New York, New York 10004

BY: ROBERT NAHOUM, ESQUIRE

JOSEPH NIERMAN, ESQUIRE

PRO SE

Attorneys for Defendant:

JOSEPH NIERMAN

157 Mineral Spring Avenue

Passaic, New Jersey 07055

BARRY CHARLES SCHNEPS, ESQ.

Attorney for Defendants:

LAW OFFICES OF J. HENRY NIERMAN and

RECOVERY OF JUDGMENT

41-60 Main Street

Flushing, New York 11355

BY: BARRY CHARLES SCHNEPS, ESQUIRE

ALSO PRESENT:

Evan Rothfarb, Esq.

-----I N D E X-----

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BY MR. NAHOUM 7

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NIERMAN'S PAGE

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1 J. NIERMAN

2 P R O C E E D I N G S

3
4 MR. NAHOUM: Thank you, Mr. Nierman.

5 Before we get started with the examination,
6 I just want to get a couple things straight
7 here.

8 Ideally, we would be conducting this
9 examination three times. One for each of
10 the defendants. I understand that that may
11 be a little impractical for our purposes, so
12 I'm going to do my best to try and ask my
13 questions and be clear about which party I'm
14 asking it of. I'm going to ask you to do
15 your best to be clear on behalf of which
16 party you're answering. Okay?

17 MR. Nierman: Understood.

18 MR. NAHOUM: And maybe we can remind
19 each other as we go along if we have -- if
20 the other party's having some trouble with
21 it.

22 Let's also clarify who is the 30(b)(6)
23 here. Mr. Nierman, you are an attorney, but
24 you're also a party to this litigation, and
25 I know that counsel, Mr. Schneps, is also

1 J. NIERMAN

2 here, so I want to know who's representing
3 who?

4 MR. NIERMAN: So I am representing
5 myself, pro se. Mr. Schneps is representing
6 both of the co-defendants.

7 MR. NAHOUM: Okay. So I'm -- I'm not
8 going to conduct this deposition sending off
9 two sets of objections as we go along. So
10 let's have it clear now. Who is going to be
11 making vocal objections, if necessary.

12 Mr. Schneps, you want to chime in?

13 MR. SCHNEPS: We can let the pro se
14 defendant make the objections.

15 MR. NAHOUM: So we should not expect to
16 hear any objections from you, Mr. Schneps?

17 MR. Nierman: I don't know that he has
18 an obligation to waive his right to object.
19 And that if there -- being that there are
20 multiple parties here, and I'm acting pro se
21 as my own attorney, I don't see why we
22 should waive anything.

23 MR. NAHOUM: I'm not asking you to
24 waive. So going back to my first issue, it
25 will help us get through those objections if

1 J. NIERMAN

2 we all are very clear about who's asking
3 what of whom, right?

4 MR. Nierman: Fair enough.

5 MR. SCHNEPS: Could I just say this?

6 MR. NAHOUM: Please do.

7 MR. SCHNEPS: With the deposition, I
8 really doubt there's going to be very many
9 objections in this so, you know, I'm
10 probably going to be largely quiet unless
11 something I consider so outrageous. So, you
12 know, I think we should just go forward and
13 see how it goes.

14 MR. NAHOUM: Okay. Well, if it becomes
15 a problem, we'll deal with it then.

16 Let's begin with the examination.

17 J O S E P H N I E R M A N, called as a witness,
18 having been affirmed by a Notary Public, was
19 examined and testified as follows:

20 E X A M I N A T I O N

21 BY MR. NAHOUM:

22 Q. My name is Robert Nahoum. I am an attorney.
23 I am going to represent the plaintiff for the purpose
24 of these depositions. I'm going -- you're an
25 attorney, Mr. Nierman, so you're familiar with all

1 J. NIERMAN

2 this, but we're going to go through it anyway so we
3 have a clear record, okay. So I'm going to ask you a
4 few preliminarily questions and give you a few
5 instructions.

6 Firstly, have you ever been deposed before?

7 A. No, I've not.

8 Q. Okay.

9 A. Not to my recollection.

10 Q. You've sat through depositions before, yes?

11 A. Yes, many times.

12 Q. Okay. So you recall that you have to give
13 verbal responses to the questions asked of you
14 because the court reporter can't take down your nods
15 of the head and such, right?

16 A. I understand.

17 Q. Okay. And if you want to take a break,
18 that's fine. If it's an appropriate time to do so, I
19 just ask that at the time you want to take a break,
20 if there's an open question, you answer that
21 question, okay?

22 A. Understood.

23 Q. In your capacity as witness for the
24 corporate defendant and the Law Office defendant,
25 where Mr. Schneps is defending the deposition. He

1 J. NIERMAN

2 may object from time to time. Unless that objection
3 involves some form of a privilege, the court reporter
4 will note his objection, but you'll still need to
5 answer the question. Understood?

6 A. I understand your perspective on that
7 without agreeing about your legal perspective.

8 Q. If it becomes an issue we can deal with at
9 the time.

10 A. Understood.

11 Q. The same applies for your pro se status. If
12 you're objecting to a question, as long as it doesn't
13 involve a privilege or a trade secret of some kind,
14 you'll have answer the question.

15 A. As a pro se litigant I believe I'm entitled
16 object to any questions that would be asked to me in
17 my corporate capacity. Simply as an attorney -- as
18 an attorney of self objecting to a question -- in
19 other words, if there was a third party who was being
20 deposed on behalf of Recovery of Judgments, I as a
21 pro se litigant have a right to object to it. So in
22 that sense, even if Mr. Schneps might raise an
23 objection to a question that you asked of Recovery of
24 Judgments, I as a pro se litigant would have that
25 right.

1 J. NIERMAN

2 Q. You're entitled to say whatever you want
3 when you're testifying, okay, but in your capacity as
4 a witness on behalf of Recovery of Judgments or the
5 Law Office of J. Henry Nierman, Mr. Schneps is
6 representing you so it's his objection that have --
7 that, I guess, I will entertain. But, again, you
8 need to answer the question.

9 A. I understand your perspective. I have one
10 question before you continue, sir. I note that Mr.
11 Rothfarb is on the phone -- is on the zoom call at
12 the same time. Is he conducting deposition on behalf
13 of plaintiff as well or -- I'm wonder why there are
14 two attorneys here.

15 Q. I'll be doing the examination?

16 A. The reason for my question is being that
17 there's a claim against the defendants for --
18 essentially for attorneys fees it seems as -- I'm
19 just going to note my objection for the record the
20 fact that it seems like there's overkill in having
21 two attorneys on behalf of the plaintiffs.

22 Q. You can take that up at the appropriate
23 time.

24 Mr. Nierman, are you taking any medications
25 right now that might interfere with your ability to

1 J. NIERMAN

2 give testimony today?

3 A. No, I'm not.

4 Q. And again, can you please just state your
5 full name?

6 A. Joseph Henry Nierman.

7 Q. What's your home address, sir?

8 A. [REDACTED], Passaic, New
9 Jersey [REDACTED]

10 Q. Do you own that home?

11 A. No.

12 Q. Who does?

13 A. My wife, Susan.

14 Q. Same last name?

15 A. Yes.

16 Q. Is there a mortgage on the home?

17 A. Yes.

18 Q. Does your wife work, sir?

19 MR. Nierman: I'm going to object on
20 grounds that this is irrelevant.

21 BY MR. NAHOUM:

22 Q. Okay. Please answer the question.

23 Does your wife work, sir?

24 A. I'm not going to answer that question.

25 Q. Why not?

1 J. NIERMAN

2 A. Because it's not relevant and I want to
3 streamline this deposition.

4 Q. Sir, I'll ask you one more time. Does your
5 wife work?

6 A. I'm going to respectfully decline to answer
7 the question.

8 Q. Do you have children, sir?

9 A. Yes.

10 Q. How many children do you have?

11 A. Six.

12 Q. In private or public school?

13 A. Which ones?

14 Q. Any. Do any of your children go to private
15 or public school?

16 A. They attend -- yes.

17 Q. Yes what? Private or public?

18 A. Private.

19 Q. How many of your children attend private
20 school?

21 A. I'm not sure if it's a private school or
22 not.

23 Q. And --

24 A. It's college.

25 Q. Do you know what the tuition is for those

1 J. NIERMAN

2 schools?

3 A. No, not offhand.

4 Q. Ballpark?

5 A. I have no idea what my eldest daughter pays
6 for tuition. She's in graduate school for PA school.

7 My second son is in -- is transitioning from one
8 school to another. He's on -- he's on a break now.

9 He just finished in one school. He's switching to
10 another school. I have no idea what the tuition is
11 going to be for that school. And the tuition for my
12 other kids, one is in Touro on a scholarship and
13 three left now. One is \$5,500 per month. The other
14 two -- I'm sorry, not per month, \$5,500 per year, and
15 the other is -- the other two I would estimate are
16 collectively around eight grand, but those are -- I
17 would say those are ballpark and that's because I get
18 considerable discounts from the private institutions.

19 Being that they're -- the fees that I should be
20 paying are considerably higher than those numbers
21 that I just talked about.

22 Q. Do you have records that would reflect what
23 the tuition is at each of your children's private
24 schools?

25 MR. Nierman: I'm going to object to

1 J. NIERMAN

2 this on the basis that it's not relevant.

3 BY MR. NAHOUM:

4 Q. I'm just asking if you have records like
5 that?

6 A. What they're supposed to be or what I pay?

7 Q. What you pay.

8 A. I imagine so.

9 Q. Okay. So what we'll do is we'll leave a
10 blank here in the transcript, and since you weren't
11 able to answer what the tuition was or what you pay,
12 we'll leave a blank in the transcript. After this
13 deposition, you have an opportunity to review your
14 records, you can fill in that blank, Okay.

15 MR. Nierman: Taken under advisement.

16 BY MR. NAHOUM:

17 Q. Who pays those bills, sir?

18 A. I do.

19 Q. For whom do you work?

20 A. Myself.

21 Q. Self employment?

22 A. Correct.

23 Q. Where? Do you work on under a trade name?

24 A. I work under the name of Law Offices of J.
25 Henry Nierman.

1 J. NIERMAN

2 Q. I'm sorry. Can you say that more clearly?

3 A. I work under the name of the co-defendant,
4 Law Offices of J. Henry Nierman.

5 Q. And what's your business address?

6 A. I work out of my home.

7 Q. And your current job title?

8 A. Attorney.

9 Q. Are you paid a salary?

10 A. No.

11 Q. How are you paid?

12 A. I earn fees. I collect fees like money I
13 earned fees. I use money that's been escrowed or I
14 collect money from clients that owe me money.

15 Q. Why would -- why would a client owe you
16 money?

17 A. The same reason a client would you owe you
18 money. Anyone -- any time an attorney does work for
19 a client they get paid.

20 Q. And so is it a that fair statement that one
21 hundred percent of what you bill to a particular
22 client is how you earn your income?

23 A. Yes.

24 Q. Where did you work before your self
25 employment?

J. NIERMAN

A. I was self-employed while working for Recovery of Judgments. That's the last employer that I had.

Q. Had you worked at any law firms?

A. Prior to Recovery of Judgments I worked many years ago for Law Offices of Gerald P. Gross.

Q. Where was that?

A. He's an attorney who's based out on Long Island.

Q. When was that?

A. It was more than 15 years ago. I don't remember when my end date was though. I -- it may have been as many as 18 years ago.

Q. Can you describe your educational background?

A. My most recent degree is from Fordham University where I attained a jurist doctorate.

Q. AND before that?

A. I got my undergraduate degree from Baruch University.

Q. When was that?

A. I'm sorry?

Q. When?

A. When did I graduate from Baruch?

1 J. NIERMAN

2 Q. Yeah. Why don't you give me Baruch, and
3 then you can give me Fordham?

4 A. I'm not sure what year I graduated from
5 Baruch. It was probably '94, '95. It might have
6 been as early as 1993. I graduated from Fordham in
7 1998 and was admitted in 1999.

8 Q. Besides being a lawyer, do you hold any
9 special training or professional certificates?

10 A. Besides my law degree and my --

11 Q. Yes.

12 A. -- admission to the bar?

13 Q. Yeah.

14 A. I can't think any off hand, no.

15 Q. And besides your law license, do you hold
16 any other professional licenses?

17 A. No.

18 Q. Are you currently in good standing as an
19 attorney with the bar?

20 A. Yes, I am. I assume that when you say other
21 licenses you don't mean driver license or anything
22 like that?

23 Q. I mean professional licenses I think was the
24 question.

25 A. I just wanted to be clear.

J. NIERMAN

Q. So --

A. So the answer was correct.

Q. Are you in good standing with the bar?

A. To my knowledge, yes.

Q. Are you in admitted to practice -- I'm sorry. Strike that.

In what states are you admitted to practice?

A. New York.

Q. Are you admitted in any other jurisdiction?

A. No.

Q. Have you ever been the subject of professional disciplinary proceedings?

A. No. Let me clarify. When you say subject of disciplinary proceedings, I'm not sure what that term means. So I want to make sure I understand correctly.

Q. Has an ethics complaint ever been lodged against you?

A. I believe so, yes.

Q. Can you describe that?

A. There was an ethics complaint that was filed, I want to estimate it around five or six years ago. That was dismissed.

Q. What were you accused of?

1 J. NIERMAN

2 A. As I recall it was a debtor who was -- who
3 claimed that his monies had been improperly seized.
4 I submitted the evidence to establish that the
5 seizure was proper and the case was adjudicated as me
6 not -- me not having committed any wrongdoing.

7 Q. You said you submitted the evidence. To
8 whom did you submit evidence?

9 A. To the bar.

10 Q. Have you --

11 A. Again, the detail breakdown of the entire
12 incident and all the factors that were related to it
13 and they found no wrongdoing had been committed at
14 all.

15 Q. Are there documents in your possession that
16 reflect the ethics complaint that you just testified
17 to?

18 A. Are there documents that exist? Yes, I'm
19 sure.

20 Q. Do you have any in your possession?

21 A. I don't know.

22 Q. Okay. I'm going to ask that after this
23 deposition you produce every document that you have
24 related to this ethics complaint.

25 MR. Nierman: Taken under advisement.

1 J. NIERMAN

2 BY MR. NAHOUM:

3 Q. Sir, do you have a New York office?

4 A. That I work out of? I mean, I have an
5 office located in Flushing, but I'm never there or
6 very rarely.

7 Q. You testified -- sorry. You testified a
8 couple minutes ago that you work out of your home?

9 A. I do.

10 Q. Okay. So you keep a New York office.
11 Where's the location?

12 A. 168-02 Jewel Avenue, Flushing 11365.

13 Q. And do you have a lease for that location?

14 A. No.

15 Q. Is it --

16 A. It's my father's home.

17 Q. Do you have professional mail delivered
18 there?

19 A. That's correct.

20 Q. Is that the address you have on file with
21 the State of New York in terms of --

22 A. I believe so.

23 Q. -- in terms of your license?

24 A. I believe so, yes.

25 Q. I'm going to ask you a series of questions

1 J. NIERMAN

2 now about Recovery of Judgments, LLC?

3 A. Understood.

4 Q. Okay. So these questions are going to be
5 directed to you in your capacity as a witness for
6 Recovery of Judgments, LLC?

7 A. Understood.

8 Q. Okay. Who is Recovery of Judgments, LLC?

9 A. I'm not sure what you mean when you say who.
10 It's a corporation. It's a limited liability
11 company.

12 Q. And can you describe your understanding of
13 what Recovery of Judgments, LLC does?

14 A. Recovery of Judgments, LLC has been out of
15 operation since 2017, so right now it's not doing
16 anything. That statement is -- when it was
17 operating, it was in the business of executing
18 judgments, both judgments that it had acquired and
19 judgments that have third parties.

20 Q. Can you explain judgments?

21 A. Judgments are any judgment that have been
22 entered with the clerk of court in the State of New
23 York.

24 Q. Money judgments you mean?

25 A. That's correct.

1 J. NIERMAN

2 Q. When did Recovery of Judgments, LLC form?

3 A. I want to -- off the top of my head I would
4 estimate in 2013 or '14.

5 Q. Who formed it?

6 A. Shawn Porat.

7 Q. Do you have any involvement with the
8 formation of Recovery of Judgment LLC?

9 A. I don't believe so, no. The reason I say I
10 don't believe so is that Shawn started a company
11 called Recovery of Judgment, and he had been
12 operating it before I became involved, and when I
13 joined in, so we created an operating agreement,
14 which reflected our ownership interests, and I
15 believe that we stayed with the same LLC that he had
16 originally formed prior to my involvement therewith.

17 Q. Do you have a copy of that operating
18 agreement?

19 A. Not in my possession. I haven't looked at
20 it in many years.

21 Q. Where would it be?

22 A. It could be in records that I have from a
23 long time -- from -- I still have some records in my
24 garage. It could be there. The company has not been
25 operational for three years, and I certainly hadn't

1 J. NIERMAN

2 looked at it in some -- in quite some time just
3 before that.

4 Q. But this lawsuit has been pending for some
5 time.

6 A. Right. The company stopped working before
7 this lawsuit commenced.

8 MR. NAHOUM: I'm going to ask that a
9 copy of the operating agreement be produced.

10 MR. Nierman: Taken under advisement.

11 BY MR. NAHOUM:

12 Q. Where is the principal place of business of
13 Recovery of Judgment LLC?

14 A. There is no principal place of business
15 anymore.

16 Q. Where was it?

17 A. We had several locations during our tenure.
18 For awhile we were at 352 Seventh Avenue. There was
19 a point I think we were on 29 West -- 17 West 29th
20 Street. There's another point before that I think
21 that we were up on 36 and Seventh Avenue. I don't
22 recall. I think 450 Seventh Avenue, but that's
23 really -- I could be wrong. I don't remember. That
24 was one of the earlier locations. We moved around as
25 we grew to better locations.

1 J. NIERMAN

2 Q. And were those locations pursuant to real
3 property leases?

4 A. Yes.

5 Q. Do you have copies of those real property
6 leases?

7 A. Certainly not.

8 Q. Who might have them?

9 A. I don't know that anybody has them anymore.
10 Those leases have long since expired.

11 Q. Do you know who landlords were for those
12 locations?

13 A. I don't recall any -- the names of any of
14 the corporate landlords, no. Most of the
15 negotiations for leases was the department that was
16 handled by Shawn. If you'd like, I can break the way
17 we structured our business relationship --

18 Q. We'll get there.

19 A. Okay.

20 Q. We'll get there.

21 A. Okay.

22 Q. Would he have copies of the leases for which
23 you're aware?

24 A. It's possible. I would be surprised, but
25 it's possible.

1 J. NIERMAN

2 Q. And you don't recall who any of the
3 landlords were?

4 A. No. I never negotiated with the landlords
5 nor was I responsible for handling payments of our
6 rents.

7 Q. Who are the officers of Recovery of Judgment
8 LLC?

9 A. Myself and Shawn Porat.

10 Q. What are your titles?

11 A. My best recollection -- I don't recall our
12 exact titles.

13 Q. Can you spell Shawn Porat's name?

14 A. Shawn is S-h-a-w-n. Porat is spelled
15 P-o-r-a-t.

16 Q. Okay. How do you know Mr. Porat?

17 A. I found him online looking to sell Recovery
18 of Judgments.

19 Q. Can you explain that better?

20 A. I was looking to purchase a business, and I
21 found a website where people would advertise if they
22 were interested in selling a business. He advertised
23 there on that he was offering Recovery of Judgment
24 for sale, I met with him, and I decided that rather
25 than buying the business completely from him outright

1 J. NIERMAN

2 that it would be a better venture for me to form a
3 partnership with him so I bought into the company.

4 Q. How much did you pay?

5 A. It wasn't much. I think it was \$5,000, but
6 I'm not sure. That's my recollection.

7 Q. Okay. You said a few moments ago that there
8 was an operating agreement. Was there any other
9 documents reflecting your purchase of an interest in
10 Recovery of Judgment LLC?

11 A. I don't recall.

12 Q. How did you pay him?

13 A. You mean like a bill of sale?

14 Q. Anything.

15 A. I don't recall there being anything that --
16 I don't recall it being anything that formalized. We
17 were very -- when it came to a relationship between
18 ourselves, we were very relaxed with respect to
19 titles. So when you asked me earlier what titles he
20 had or I had, we looked at each other as being
21 co-owners in the company and jointly responsible with
22 each of us having our responsibility delineated in
23 accordance with understanding that we had formed this
24 between ourselves.

25 Q. How did you pay the \$5,000 purchase?

1 J. NIERMAN

2 A. I think a client of mine gave him the money.
3 So it was a client who owed me money and laid it out
4 and gave him that money. That's my recollection.

5 Q. I'm sorry. You sort of cut out here. Can
6 you repeat that one more time?

7 A. I believe a client of mine gave him the
8 \$5,000.

9 Q. Who is that client?

10 A. David Englander.

11 Q. Spell it?

12 A. E-n-g-l-a-n-d-e-r.

13 Q. And for what purpose did you represent this
14 gentleman?

15 A. Mr. Englander?

16 Q. Yes.

17 MR. Nierman: I'm going to object on
18 the basis that this is not relevant, but
19 I'll answer the question and just ask you to
20 stick to things that are really relevant.

21 THE WITNESS: I have been representing
22 David in a multiple of various business
23 matters for the last 20 years. He was my --
24 he's an old friend of mine who is one of my
25 first clients.

1 J. NIERMAN

2 BY MR. NAHOUM:

3 Q. And do you have contact information for the
4 gentleman? Address, phone number, e-mail address?

5 A. I do.

6 Q. Can you provide that?

7 A. I don't really see the point.

8 Q. Why don't we leave blanks here in the
9 transcript, and when you have a moment you can go
10 back and fill in the address, phone number, and
11 e-mail address for Mr. Englander?

12 MR. Nierman: I'm going to object and
13 take your request under advisement.

14 BY MR. NAHOUM:

15 Q. Who are the directors for Recovery of
16 Judgments, LLC?

17 A. As I said, we didn't have anything formal
18 between myself and Shawn. We looked at each other as
19 co-owners.

20 Q. Who are all the members of the LLC?

21 A. Just myself and Shawn.

22 Q. Who is Vera Porat?

23 A. Vera is Shawn's wife.

24 Q. And did she have any roles or
25 responsibilities at Recovery of Judgment LLC?

1 J. NIERMAN

2 A. Yes. She served as the office manager for
3 the last, I would estimate a year to 18 months that
4 we were operating.

5 Q. Who were her duties as office manager?

6 A. She ran the office in every sense of the
7 word with respect to from taking in mail and
8 answering questions to overseeing interns to
9 training, to taking calls and making sure that our
10 cases were being properly processed.

11 Q. Is she a lawyer?

12 A. No.

13 Q. Does she have any special training in law?

14 A. She has training from myself.

15 Q. You trained her in what?

16 A. I trained her in how to do what she did as
17 did Shawn. Shawn was doing it before I actually
18 started. Shawn and I both trained her in how to
19 handle the day-to-day operations.

20 Q. Okay. Is Shawn a lawyer?

21 A. No. Not that I --

22 Q. Does he have any special training in the
23 law?

24 A. Self-trained as far as I know.

25 Q. Did --

J. NIERMAN

A. I think he might have -- I know when I met with him when I agreed to purchase Recovery of Judgment from him, he showed remarkable knowledge of the law and what requirements there were and what requirements as far as what we must do when we're executing judgments. What we are prohibited from doing when executing judgments. He was self-taught and he understood for more about executing judgments that many of several attorneys that I have spoken with.

Q. Did you provide any training to Mr. Porat on --

A. Yes.

Q. -- legal issues?

A. Yes. When it came to legal issues, and this comes down to what our specific roles were within the company, I was responsible for handling all of the legal end of things and obviously when it comes to judgment execution there's a great deal of legal matters that come up. So when there is anything that had to do with preparing papers for proceedings, appearing in court, an answering letters, drafting letters that were not our standard form letters, or negotiating settlements, drafting settlements,

1 J. NIERMAN

2 dealing with counsel for any clients or -- not
3 counsel for clients, counsel for debtors those were
4 all areas that were my -- under my purview. With
5 respect to 99 percent of all other matters, by that I
6 mean the business end of things, that includes
7 marketing; that includes setting up the office; that
8 includes dealing with landlords or bringing in
9 interns or making sure that things were properly
10 getting done. So Shawn would set up the structure of
11 things and handle the negotiations with various third
12 parties who we engaged with and oversee payments and
13 that was his capacity.

14 Q. How were you paid from Recovery of Judgment
15 LLC?

16 A. I was paid -- you mean what was my rate of
17 compensation? Is that what you're asking? I was
18 paid by check.

19 Q. Were you a salaried -- let me ask it another
20 way. Were you a salaried employee of Recovery of
21 Judgment LLC?

22 A. No.

23 Q. Was Mr. Porat?

24 A. No.

25 Q. Mrs. Porat?

1 J. NIERMAN

2 A. Not to my recollection. Actually, I'm not
3 sure if she was salaried or not. She may have been
4 salaried. I'm not sure. I don't recall anymore. It
5 seems to me that she wouldn't have been salaried
6 because she was certainly not taking any of the
7 profits from the corporation. So -- and I know at
8 some point we had discussions about her compensation,
9 so I believe at some point she probably became
10 salaried, but I do not remember what I negotiated and
11 worked out with Shawn on that.

12 Q. Are there any records that would reflect
13 whether or not Mrs. Porat was a salaried employee?

14 A. All the business records were maintained for
15 operating ROJ, which is what we call Recovery of
16 Judgments, all the business records were maintained
17 by Shawn.

18 Q. Do you have access to them?

19 A. No. I'm not -- well, we had joint access to
20 bank accounts that were controlled by Recovery of
21 Judgment. We were both signatories. So, yeah, I
22 guess, technically the bank probably still has
23 records. I don't know.

24 Q. What bank would that be?

25 A. I think we were using TD Bank from my

1 J. NIERMAN

2 recollection.

3 Q. Are you aware of an account number?

4 A. No.

5 Q. I'll leave a blank here in the transcript,
6 and if you have any records showing what the account
7 number was for ROJ, you can fill that in.

8 MR. Nierman: I'm going to take that --

9 I'm going to object and take that under
10 advisement.

11 BY MR. NAHOUM:

12 Q. Can you describe what, if any, relationship
13 there was between Recovery of Judgments, LLC and the
14 Law Office of J. Henry Nierman?

15 A. The Law Offices of J. Henry Nierman is a
16 name that I used for business purposes. It's not
17 registered with the State of New York with any
18 agency. It was just a trade name.

19 Q. The question was could you describe the
20 relationship between Recovery of Judgment LLC and the
21 Law Offices of J. Henry Nierman.

22 A. The Law Office of J. Henry Nierman is the
23 trade name that I used when I was working as an
24 attorney and acting on behalf of Recovery of Judgment
25 LLC.

1 J. NIERMAN

2 Q. Was Recovery of Judgment LLC a client of the
3 Law Offices of J. Henry Nierman?

4 A. I don't know that we actually had a retainer
5 agreement or not. I don't recall whether or not such
6 a thing was properly formed.

7 Q. I didn't ask you about your retainer
8 agreement. I asked if it was a client?

9 A. I guess, technically, yes, they would count
10 as a client. The term client is a little bit of
11 morphous. I'm going to reserve -- I'm going to
12 withdraw my answer and say I don't really understand
13 the question.

14 Q. We'll revisit this.

15 A. Fair enough.

16 Q. How many employees did Recovery of Judgment
17 LLC have?

18 A. One.

19 Q. Who's that?

20 A. When?

21 Q. I'm sorry. When. 2017?

22 A. Salaried employees?

23 Q. Any employees.

24 A. I mean, technically you can look at myself
25 and Shawn as being employees of the company, and then

1 J. NIERMAN

2 Vera. I don't believe there were any other
3 employees, per se, no.

4 Q. Did anybody else work at Recovery of
5 Judgment LLC in 2016 and 2017?

6 A. We had some interns who would come in and
7 worked for us. I do not believe that they were
8 employees.

9 Q. How many interns did you have?

10 A. I don't know.

11 Q. Do you know any of their names?

12 A. No.

13 Q. Are there any records that reflect interns
14 working for Recovery of Judgment LLC in 2016 and
15 2017?

16 A. Very possibly. I would not have those
17 records.

18 Q. Where would those records be?

19 A. Oh, I don't know. That could be with
20 Recovery of Judgment. That could be with -- or it
21 could be that Shawn has them. So when I say Recovery
22 of Judgment, let me just clarify this. When I say
23 Recovery of Judgment that's not the same Recovery of
24 Judgment. When I say with Recovery of Judgment I'm
25 referring to the entity that is operating doing

1 J. NIERMAN

2 business currently as Recovery of Judgment. If you'd
3 like, I can clarify what I mean by that.

4 Q. By all means, please.

5 A. Okay. In 2017, well, late in 2016, I think
6 it's late 2016, this letter was -- the subject of
7 this matter of this suit happened in December of
8 2016; is that correct?

9 Q. I'm sorry. I didn't get that?

10 A. This lawsuit relates to a letter that was
11 sent in December of 2016; is that correct?

12 Q. Well, this relates to conduct in 2016.

13 A. Right. Okay. So in or around November of
14 2016, Shawn entered into an agreement with a third
15 party named WAK Enterprises for the sale of the
16 assets of Recovery of Judgment. The sale of the
17 assets really included our clients and control over
18 those accounts, as well as the goodwill of the name
19 Recovery of Judgment LLC and the rights to use the
20 name Recovery of Judgment LLC, as well as training
21 their staff in how to properly, lawfully, and
22 efficiently execute judgments. So that was signed
23 the end of -- I want to say around Thanksgiving time,
24 but it might have been in December of 2016, and I
25 believe it was closed in January or February of 2017.

1 J. NIERMAN

2 So from that point we took all the documents and
3 records that we had and kept on behalf of Recovery of
4 Judgment LLC and gave access to all those records to
5 WAK Enterprises. As I understand, WAK Enterprises is
6 currently operating. I don't know -- well, let me --
7 there is an entity out there which is operating as
8 Recovery of Judgment under the authority of WAK
9 Enterprises. Whether WAK Enterprises is the actual
10 corporation that's currently running Recovery of
11 Judgment, I have no way of knowing. But as of
12 closing of that sale of the assets to Recovery of
13 Judgment, the name Recovery of Judgment and all of
14 the assets of Recovery of Judgment were -- became the
15 property of WAK Enterprises. And I understand that
16 they're currently operating as Recovery of Judgment
17 to this day, although I certainly have nothing to do
18 with that company nor do I believe does Shawn or
19 Vera.

20 Q. Did you Mr. Nierman individually receive any
21 training from Recovery of Judgment LLC on policies
22 and procedures for debt collection, debt collection
23 compliance?

24 A. Did I receive any training?

25 Q. Yes.

1 J. NIERMAN

2 A. I might have taken a course like a CLE
3 course. I don't recall.

4 Q. Did Recovery of Judgment LLC provide any
5 training to the Law Offices of J. Henry Nierman on
6 debt collection and compliance?

7 A. No.

8 Q. How many computers were at the location for
9 Recovery of Judgment LLC in 2016?

10 A. I would have to guess. I always tell my
11 clients when I'm advising them to do depositions not
12 to guess, so I don't know.

13 Q. It is twenty computers?

14 A. Less than that.

15 Q. Ten?

16 A. Probably less than that.

17 Q. Five?

18 A. It's a fair estimate.

19 Q. Do you know what platforms those computers
20 operate under?

21 A. You mean what operating system?

22 Q. Sure.

23 A. I don't recall.

24 Q. Was there a private network between those
25 five computers?

1 J. NIERMAN

2 A. You mean when they network together -- with
3 each other?

4 Q. Right?

5 A. Yes, I believe they were. That all fell
6 under the purview of Shawn. Shawn set all that up.

7 Q. Did you have an outsource IT department, or
8 did you have an IT vendor who set up your computer
9 network?

10 A. I have no idea. I would just come in and do
11 my work.

12 Q. The interns, how many interns did Recovery
13 of Judgment LLC have in 2016?

14 A. I have no idea.

15 Q. Did any of those interns do work for the Law
16 Offices of J. Henry Nierman?

17 A. No.

18 Q. Did any of those interns do any work for
19 you, Mr. Nierman?

20 A. No.

21 Q. Did Recovery of Judgment LLC in 2016 or
22 2017, have any forms of insurance?

23 A. Recovery of Judgment, not to my knowledge.

24 Q. Has Recovery of Judgment LLC ever been sued
25 for violations of the Fair Debt Collection Practices

J. NIERMAN

Act?

A. I think one time, very early on.

Q. Do you know when that was?

A. I want to say it was within the first six months of when I was working there, and that lawsuit was withdrawn with prejudice by the plaintiff within three months of when we -- of when it was filed.

Q. Settled?

A. No, not settled. Withdrawn with prejudice. When the lawsuit was brought, I called the attorney on behalf of the plaintiff, explained to him how he was wrong on law, wrote him a letter explaining to him how he was wrong on the law, made it clear that he should withdraw his lawsuit or that we would take appropriate action, and he received my letter, agreed with my perspective and withdrew the action with prejudice.

Q. Can you produce a copy of that letter?

A. Possibly.

Q. Where would a copy of that letter be stored?

A. That would be on one of the computers that -- and again, the reason I say possibly, and I'm a little bit doubtful as to the likelihood that I was succeeding in doing so is because -- as I said, this

1 J. NIERMAN

2 was very early on in formation of Recovery of
3 Judgment LLC, and I know that we updated our
4 computers, like. Midway through our -- my tenure.

5 Q. What do you mean you updated?

6 A. At some point in time when Shawn purchased a
7 whole set of new computers for the office and the old
8 computers were basically destroyed. So I do not know
9 if that sort of thing would have been -- this is
10 something that was talking about -- it's more than
11 seven years ago. So.

12 Q. Sorry --

13 A. Sorry?

14 Q. When were the old computers destroyed?

15 A. I would guess probably 2014, 2015.

16 Q. Are there any documents that would reflect
17 when the old computers were destroyed?

18 A. I cannot imagine there being any documents
19 or records.

20 Q. Well, it happened at the time new computers
21 were purchased, right?

22 A. Right.

23 Q. Are there receipts of purchases of new
24 computers?

25 A. I have no idea. Shawn purchased those

J. NIERMAN

computers.

Q. How many computers were purchased?

A. I don't know. There was -- I estimated around five before. That's the best estimate I can give you.

Q. Why did you need five computers?

A. We had interns who would use computers.

Q. So you don't recall who any of those interns were, how many there were?

A. No. Interns would shuttle in and out on a frequent basis. There usually would be a couple at any given time.

Q. How did you find these interns?

A. Shawn did that.

Q. Advertise for them?

A. You're asking me a question, and I'm telling you I do not know the answer.

Q. Has Recovery of Judgment LLC ever been the subject of court-ordered sanctions?

A. No.

Q. We are trying to get through an exhibit now, okay.

A. Okay.

Q. So this is -- I've pre-marked this as

1 J. NIERMAN

2 Plaintiff's Exhibit 1, and this is a letter dated
3 December 27th, 2016.

4 A. Okay.

5 Q. Joseph Nierman, Law Offices of J. Henry
6 Nierman?

7 A. Yes, I see the exhibit.

8 Q. Hold it up and make sure we're looking at
9 the same one.

10 Why don't you read the first line so we know
11 we're looking at the same letter.

12 A. Dear Mr. Nierman. My office was recently
13 retained by Shawn Levy -- Shaul Levy in the
14 above-referenced matter.

15 Q. Why don't you go ahead and read the very
16 last line so we can make sure we're looking at the
17 same letter.

18 A. The last paragraph is, the subpoena was not
19 timely as it was mailed, at earliest on December
20 13th, 2016, and did not arrive until only recently,
21 i.e., my client had far less than the required ten
22 days advanced notice required in the CPLR 5224.

23 Q. Okay. Mr. Nierman, can you tell me, have
24 you seen this document before?

25 A. During the course of this lawsuit I saw it.

J. NIERMAN

Q. Have you ever seen it before then?

A. I don't recall seeing it before then.

Q. Do you dispute that this is a document you've reviewed before?

A. I'm saying I have no recollection of ever seeing this. This was sent by e-mail? Was this sent by Recovery of Judgment? I don't recall seeing this letter. I mean, prior to this lawsuit. I saw it during this lawsuit, but I don't recall seeing it prior to.

Q. Let's do this another way. I'm going to give you an another exhibit that will help us nail this down.

A. Okay.

Q. Okay. This is 1-A. Do you have that, sir?

A. 1-A, yes.

Q. It's a green card, certified mail?

A. Yes.

Q. Do you have that?

A. This?

Q. Can you read who that's addressed to?

A. Mr. Joseph Nierman, Law Office of J. Henry Nierman, 39 West 29th Street, suite 612, New York, New York 10001.

1 J. NIERMAN

2 Q. On the right column there, is that your
3 signature?

4 A. No.

5 Q. Do you know who signed for this?

6 A. I have absolutely idea who Warren is.

7 Q. Well, what is this location, 39 West 29th
8 Street?

9 A. It's possible we were operating there. I
10 don't recall that particular address, but I certainly
11 will not dispute that it's possible. I don't think
12 we were ever in suite 612. I don't think we were
13 ever on the sixth floor. I don't know. I don't know
14 what this address is. I'm not going to guess.

15 Q. We're going to have to bounce around a
16 little bit to nail this down, okay.

17 A. Understood.

18 Q. Let's go ahead and take a look at Exhibit 2,
19 please.

20 Do you see that, sir?

21 A. Yes.

22 Q. Do you know what that document is?

23 A. This is a document that looks like a
24 subpoena being served Matt Morrison -- from Matt
25 Morrison to Shaul Levy.

1 J. NIERMAN

2 Q. It's a court subpoena; is that right?

3 A. Well, I don't know if it's a court subpoena,
4 but it looks like a subpoena.

5 Q. It's got a caption there Civil Court with
6 City of New York, County of New York, Matt Morrison
7 v. Shaul Levy; is that right?

8 A. I see that.

9 Q. And caption says subpoena duces tecum; is
10 that right?

11 A. Yes. That's what it's labelled on this
12 document, yes.

13 Q. And can you look at the very last page. Is
14 that your signature there, sir?

15 A. Yes, that's my signature.

16 Q. Okay. And can you read the address on the
17 signature block there?

18 A. 39 West 29th Street, Suite 612, New York,
19 New York 10001.

20 Q. Referring your attention back to the
21 Exhibit 1-A, that green card, does refresh your
22 recollection of what that address is?

23 A. It seems like the address -- besides from
24 the ZIP code which on the letter or on the subpoena,
25 it doesn't seem to have a valid ZIP code.

1 J. NIERMAN

2 Q. I'm sorry. Could you say that one more
3 time? What doesn't have a valid ZIP code?

4 You're muted, sir. Mr. Nierman, you're
5 muted.

6 Have we lost Mr. Nierman?

7 Are you there?

8 A. I'm back.

9 Q. I lost you there, sir.

10 A. I apologize. I keep getting a phone call
11 over and over again, and that's why I was asking
12 you -- I thought I answered the question and I said
13 could I just take a moment to answer this phone
14 because it rang, like, four times.

15 What I see here is -- to answer your
16 question, is that on the subpoena there is an address
17 which seems to have this address of 39 West 29th
18 Street, Suite 612, New York, New York. The ZIP code
19 is different, but in other respects it seem to match.

20 Q. If you look earlier in that document under
21 the paragraph it starts "Now, therefore," do you see
22 that?

23 A. Am I looking at Exhibit 2 again?

24 Q. Exhibit 2, page 2.

25 Do you see that?

1 J. NIERMAN

2 A. Yes.

3 Q. Can you read the address in the body of that
4 paragraph?

5 A. Now, therefore, pursuant to CPLR Section
6 5223 and Section 5224, we commend you to appear and
7 attend the Recovery of Judgment at 39 West 29th
8 Street, Suite 612, New York, New York 10001, on
9 December 26th, 2016, at 10:00 a.m., and at any
10 recessed or adjourned dated for the taking of
11 deposition under oath upon oral or written questions
12 on all matters relevant to the satisfaction of the
13 judgment.

14 Q. Okay. Does this refresh your recollection
15 on the significance of the address 39 West 29, Suite
16 612, New York, New York 10001?

17 A. Yes, it does. I believe that we were
18 probably working out of that address at that time.

19 Q. Okay. Referring your attention back to
20 Exhibit 1-A, the green card, you don't recognize that
21 signature?

22 A. No. I have no idea who that is.

23 Q. Do you know who would have been in the
24 office on that date?

25 A. I cannot even image who someone name Warren

1 J. NIERMAN

2 would be. The system that we had for getting mail
3 was a little frustrating in that -- as I recall in
4 that office all the mail, it was a -- it was like one
5 of those types of leases where there is a lobby and
6 several different offices of different companies all
7 rent out various rooms on a floor and the mail is
8 given to a receptionist at the front section, and he
9 would sort the mail for the different companies and
10 then distribute it. So my best guess is that
11 assuming this was delivered properly -- well, and I
12 have no idea if it was or not. I have no idea if
13 this gentleman Warren -- I don't know if it came to
14 the right address or if it went to the wrong place,
15 but that's the only possible explanation I have as to
16 why mail that would have been delivered, properly
17 delivered to that office, would have been signed by
18 someone else. But again, I have no absolutely no way
19 of knowing who -- what the name of the person signing
20 who he is.

21 Q. Sir, have you ever been to that office
22 location, 39 West 29th Street?

23 A. Yes.

24 Q. Was it, like, an office? Was it an office
25 share?

1 J. NIERMAN

2 A. Yeah, I mean. I don't know. As far as the
3 actual term that people would use when referring to
4 it, I think office share is probably a good -- is
5 probably a good description.

6 Q. Did Recovery of Judgment LLC have permanent
7 and fixed work stations at this location?

8 A. Yes.

9 Q. Was there a lease?

10 A. Right. I don't know if they called it a
11 lease. I think they -- I think most of the
12 agreements they have in New York, and I remember the
13 ones that I had seen, they don't want to call it a
14 lease because then it's more difficult to evict you.
15 I think they call it a right to -- it's something
16 that establishes the right of usage without actually
17 being referred to as a lease.

18 Q. A license --

19 A. I think it might have a license to use.
20 That way they don't have to worry about evicting
21 tenants. I mean, technically -- we're both
22 attorneys, so I don't want to speak incorrectly here
23 and use a legal term that would inaccurate. I think
24 it's unlikely it was a lease because most of time
25 when I was looking at these agreements, after they

1 J. NIERMAN

2 were executed I would note that they were almost
3 never a lease per se where a landlord would have to
4 struggle to remove a difficult tenant, but that they
5 were sort of licensed, which would create no real
6 property interest in the premise itself.

7 Q. But Recovery of Judgment LLC had six work
8 locations there, yes?

9 A. I believe so, yes.

10 Q. Did you keep your computers there?

11 A. Yes. When I would come into work, which was
12 most days, I come -- again, as I said, we bounced
13 around to a few locations and that's why when you
14 tell me an address I don't really remember. Going
15 back many years, I mean, we had, during the course of
16 five years, at least in possibly five or six
17 different locations. So now that you refresh my
18 recollection to these documents, I will tell you,
19 yes. We were located at 39 West 29th Street. We
20 would not have had a subpoena which would reflect an
21 improper address. They put down suite 612, I guess
22 we were located -- well, one of the offices there was
23 suite 612. We had more than suite. I had my own
24 separate room apart from Vera with a different -- on
25 the same floor with a different entrance.

J. NIERMAN

Q. How long were you at that location?

A. I have very little recollection. Other than, say, probably a year, but I have -- I don't know.

Q. In the time that Recovery of Judgment LLC was at this 39th Street location, did you ever conduct any depositions there?

A. I don't remember. It would not have been a very regular thing to conduct depositions. Most people who -- you know, do not come in for depositions. And it wasn't our practice to hold people's feet to the fire on failing to come in for deposition.

Q. Can I refer your attention back to Exhibit 1, the December 27th, 2016 letter?

A. By all means.

Q. At the very top there's an e-mail address. Support@RecoveryofJudgment.com.

Who received e-mails directed to that e-mail address?

A. That would have been either Vera or Shawn.

Q. And there's a fax number (646) 810-5781. In 2016, was that a fax number attributable to Recovery of Judgment LLC?

1 J. NIERMAN

2 A. Probably it looks familiar.

3 Q. Who would receive faxes sent to Recovery of
4 Judgment LLC?

5 A. Vera.

6 Q. Do you have any recollection of Vera or
7 anyone else handing you a copy of this letter?

8 A. No.

9 Q. Do you recall having a telephone
10 conversation with attorney Daniel Schlanger about the
11 contents of this letter?

12 A. I don not recall that conversation. That
13 doesn't mean -- I want to be clear. That doesn't
14 mean it didn't happen. What I'm telling you is I
15 don't have any recollection of it. It was not
16 something that seems very memorable.

17 Q. Were -- was Vera Porat working for Recovery
18 of Judgment LLC in 2016?

19 A. Yes.

20 Q. Was Shawn Porat working for Recovery of
21 Judgment LLC in 2016?

22 A. Yes.

23 Q. Were they working there on December 27th,
24 2016?

25 A. I have no idea.

1 J. NIERMAN

2 Q. Are there any records that would reflect
3 whether or not they were working there on
4 December 27th, 2016?

5 A. I have no idea. When I would come to the
6 office -- I would -- I would -- Vera would come in
7 and say these are the things that I would like you
8 take care of today or these are matters that are
9 pressing or these are things that have to be done,
10 and that was my -- and that would basically become my
11 to-do list for things that had to be done for
12 Recovery of Judgment. At the same time I was
13 operating my whole law practice, so I would sort of
14 throw in that stuff that needed to be done for
15 Recovery of Judgment LLC together with other work
16 that I had to do for my law practice.

17 So with respect to what was happening with
18 Recovery of Judgment LLC on a day-to-day basis, who
19 was there, who got what, what were they doing, I do
20 not know.

21 Q. You testified earlier that Recovery of
22 Judgment LLC was sold or the assets of Recovery of
23 Judgment LLC were sold to a company called WAK; is
24 that right?

25 A. Spelled W-a- -- yes, WAK Enterprises, W-a-k.

J. NIERMAN

Q. When was that?

A. I believe the closing was in January or February of 2017.

Q. After --

A. Go ahead.

Q. After the date of this letter Exhibit 1; is that right?

A. I'm assuming this letter was sent on the date that it says or on date of that -- I don't know what date -- I don't know what date of delivery this is. It's a very weird looking thing so I don't know.

Q. Does Recovery of Judgment LLC have a document retention policy?

A. With respect to what kind of documents?

Q. Any kind.

A. With respect to anything that was sent to them, we had -- we had measures that were implemented in order to ensure that anything that's potentially sent to them would be properly safeguarded and protected and secured away from anyone whose eyes should not be seeing such documents.

Q. Can you describe those measures?

A. Vera and Shawn had set up various sections of the room that were in her office. Again, my

1 J. NIERMAN

2 office was separate from her office. She had set up
3 a section for documents when they came in, and I
4 believe he had a system set up for removing documents
5 when they were no longer pertinent.

6 Q. Were those policies stated in any written
7 manual or training material?

8 A. When you say a written manual --

9 Q. Or similar writing?

10 A. I don't know. I don't know if that
11 particular policy was written in any manual. We had
12 manuals that were set up training interns. We had
13 manuals that were set up as far as what our policies
14 were and how to deal with clients. Whether that
15 particular element was written in a manual, I have no
16 idea. I know that we were -- when we operated, we
17 were terrified of the FDCPA. The FDCPA put the fear
18 of God in you. And that's why anytime we ever had
19 any questions -- when we set up our policies
20 initially, when we set up our way of operating how
21 are we going to do these things? What the interns
22 would be able to do, what they would not be able to
23 do? Who would be dealing with clients? How would we
24 handle things in a timely manner? Like, if there's a
25 demand for various legal matters that come up, how

J. NIERMAN

all of this would be handled?

So we set up a policies, we also set up a training manual with respect to what we teach interns to make sure that they're not violating anything under the FDCPA. Whenever anything unusual would come up, which was not standard, fair, not something that would come up a hundred times a day. But anything that would come up that was an unusual type of thing, Vera would question me as to what our responsibilities and duties were under the FDCPA. And she came to me fairly regularly with that sort of question. For example, is this a valid judgment that we're allowed to -- that we're able to execute? She would show me something.

You as an attorney are aware, a lot of times a judgment from jurisdiction A versus jurisdiction B will look completely different. In order to know whether it's a valid judgment that's been entered by clerk of the court that's executable versus a decision that's unexecutable or something like that. So she would always question me if there was anything that looked remotely unusual. And if I didn't know the answer offhand, I would get back to her that day with an answer.

J. NIERMAN

Q. Were Recovery of Judgment's documents stored electronically?

A. Yes.

Q. Where?

A. Some we had a cloud. When we turned over the assets of Recovery of Judgment LLC to WAK Enterprises we gave them our log in access. That was part of what we were doing.

Q. Log in to what?

A. So we had -- Shawn had set up with a collections -- I don't know if you call it an app or a cloud service, which was specifically oriented for the credit collection industry. Meaning, that they have -- the same way attorneys have various time clips and things like that, which are designed to help -- which are specialized for the need of the attorney industry. So credit collections have -- credit collections service agencies have set up things that are specialized for the needs of credit collectors. So all the pertinent information with respect to the creditor, the debtor, the date of the judgment, things of that nature. The locale, the accruing interests and notes with respect to steps that are going on with collection of file, that was

J. NIERMAN

all saved on a cloud. We each had log in information to go in and once we would log in to the system, we would then be able to pull up information about any clients or debtor who we were in process of pursuing. I don't remember if it refers to potential clients or not. I don't believe that was on there, but I'm not positive.

Q. What was the name of the platform?

A. I don't remember the name of the platform. This was set up by Shawn. Shawn probably, or Vera, I'd be surprised if they don't remember, but I don't remember. I only had to log into it myself a handful of times because most of the stuff that I was doing had very little relationship to that end of things. It is very useful when you're collecting judgments. It's a lot of document generation. It's a lot of documents that are pretty much the same thing, other than different fields which are going to be -- which would vary from one client to another client. So I believe all the fields and things like that, and our forms, which I would oversee and produce, they would be inputted into the system and then used to basically merge in to this case or that case, would be used to generate those documents for service on

J. NIERMAN

third parties.

Q. Would Recovery of Judgment LLC interns given access to this platform?

A. Were they given -- I don't know. I don't recall. I think probably. They probably were given access. I would imagine so, but I'm not sure.

Q. After the sale of Recovery of Judgment LLC, were any documents retained by you or anyone else?

A. No, I didn't keep anything. I don't know about Shawn, but I'm speaking for myself now, I didn't retain anything.

Q. Why not?

A. I think it was necessary.

Q. You're a lawyer, yes?

A. Yes, I'm an attorney. Why is that changed at custody?

Q. Did you continue to be the lawyer for Recovery of Judgment LLC after the sale of the company?

A. No.

Q. File change of counsel on all the cases in which you were the attorney of record?

A. The funny thing with that, cases where I was attorney of record, I think there was actually one

1 J. NIERMAN

2 client who I stayed on as attorney for, and that
3 client had a different function and relationship to
4 Recovery of Judgment LLC than all the other clients.
5 It's not like there were things going on in the legal
6 world for an extended periods of time for Recovery of
7 Judgment LLC. So -- and that client I had my own
8 agreements with them as to how I represented them.

9 Q. Why did you sell your interests in Recovery
10 of Judgment LLC?

11 A. For the money.

12 Q. What did you get for it?

13 MR. NIERMAN: I'm going to object to
14 that question.

15 BY MR. NAHOUM:

16 Q. Okay. Can you answer, please?

17 A. Well, I think it's irrelevant. I think the
18 court has actually said that's not relevant. I think
19 this has matter come up before the court before, and
20 the court has said I'm not obligated to answer that
21 question. So I'm not going to provide an answer to
22 that.

23 Q. Who are the officers of WAK Enterprises?

24 A. The gentleman that we dealt with was -- oh,
25 I dealt with an individual named Steven Fellas,

1 J. NIERMAN

2 F-e-l-l-a-s. I believe his father is the owner and
3 he might be the operator. I don't know the
4 relationship there. I believe his father has the
5 same last name. As I recall, his first name is Ken,
6 K-e-n.

7 Q. Did you know these gentlemen prior to the
8 sale of Recovery of Judgment LLC?

9 A. No.

10 Q. Did you advertise the company for sale?

11 A. I did not. I don't know what steps Shawn --
12 I don't know what steps Shawn. Shawn was the one who
13 located these purchasers and was involved in
14 negotiating everything.

15 Q. At the time of the sale of Recovery of
16 Judgment LLC, were the buyers notified of the
17 plaintiff in this action's potential FDCPA claim?

18 A. I do not know. I don't think we thought of
19 it as a potential FDCPA claim.

20 Q. For the sale of Recovery of Judgment LLC,
21 was a copy of the letter, Exhibit 1, provided to the
22 buyers?

23 A. I don't know. I certainly didn't.

24 Q. I'm going to ask you some questions about
25 the Law Offices of J. Henry Nierman.

1 J. NIERMAN

2 A. Okay.

3 Q. And again, I'm going to try and be specific
4 about from whom I'm expecting an answer and I hope
5 that you'll do the same with your answers.

6 A. Okay.

7 Q. You mentioned before that it was a trade
8 name, right?

9 A. That's -- that's a colloquial description.
10 I don't know that I want to attribute the legal term
11 "trade name" to it, but that is a name that I
12 operated under.

13 Q. So it's not incorporated?

14 A. No.

15 Q. Has any certificates of doing business as
16 certificates been filed on behalf of the Law Offices
17 of J. Henry Nierman?

18 A. No.

19 Q. Where is the Law Offices of J. Henry Nierman
20 principal place of business?

21 A. I would tell you that I don't know when you
22 say a principal place of business. Let me make this
23 clear. There is no official Law Offices of J. Henry
24 Nierman. I would put on my cover letter the Law
25 Offices of J. Henry Nierman. That's the extent of

1 J. NIERMAN

2 the existence of Law Offices of J. Henry Nierman.

3 When you say a principal place of business, I'd say I
4 work at the Law Offices of J. Henry Nierman. I don't
5 know. Legally how that's defined, I don't know.

6 It's really it's myself. As I said, I use that as a
7 trade name. So.

8 Q. The question is at what address does the Law
9 Offices of J. Henry Nierman operate?

10 A. Today? When?

11 Q. In 2016.

12 A. I don't recall.

13 Q. Did the Law Offices of J. Henry Nierman
14 every operate at 39 West 29th Street?

15 A. I don't know.

16 Q. You don't know if your law firm ever
17 operated from the same address that Recovery of
18 Judgment LLC was operating in 2016?

19 A. My point is I don't really understand -- I
20 don't know how to draw that distinction. I was
21 working out of that location so did I officially -- I
22 didn't officially register Law Offices of J. Henry
23 Nierman with any agencies, with the State of New York
24 or with anybody, so I don't even understand the
25 question.

1 J. NIERMAN

2 Q. At what address did the Law Offices of J.
3 Henry Nierman operate?

4 A. I'm going to say again, I don't understand
5 the question.

6 Q. What does the Law Offices J. Henry Nierman
7 do?

8 MR. NIERMAN: I'm going to object as to
9 asked and answered.

10 BY MR. NAHOUM:

11 Q. What did Law Offices of J. Henry Nierman do
12 in 2016?

13 MR. NIERMAN: I'm going to object as
14 asked and answered.

15 BY MR. NAHOUM:

16 Q. Does the Law Offices of J. Henry Nierman
17 have any employees?

18 A. No.

19 Q. Does Law Offices of J. Henry Nierman ever
20 share any office space with Recovery of Judgment LLC?

21 A. I don't think I understand the question.

22 Q. Do you need to hear it again?

23 A. No. I don't understand the terminology that
24 you used.

25 Q. Did your law firm ever share office space

1 J. NIERMAN

2 with Recovery of Judgment LLC?

3 A. Are you asking did we share a lease?

4 Q. Share office space.

5 A. Okay. So I'm going to try to explain this
6 one more time. I, Joseph Nierman, would use the name
7 Law Offices of J. Henry Nierman. There is no formal
8 entity called the Law Offices of J. Henry Nierman.
9 While I was working for Recovery of Judgments, I was
10 working out of an office for my own law practice
11 which is called Joseph Nierman or you can call the
12 Law Offices of J. Henry Nierman. They're synonymous.
13 They're the same thing. And at the same time, I was
14 also doing work on behalf of Recovery of Judgment
15 LLC. With respect to were we sharing an office, I
16 don't know what that means. That's like asking me
17 was I sharing an office with myself. The lease was
18 between Recovery of Judgment and -- or whatever
19 lease, which I said is not a lease. The license
20 agreement was between Recovery of Judgment LLC and
21 the landlord. There was no it separate fee for that
22 license paid by me individually or by Law Offices of
23 J. Henry Nierman.

24 Q. What percent of the Law Offices of J. Henry
25 Nierman's practice is devoted to debt collection?

1 J. NIERMAN

2 A. Today? Zero.

3 Q. 2016?

4 A. The minimal amount. With respect to debt
5 collection? How do you qualify debt collection?
6 Meaning, if -- let me explain my question and you
7 tell me is this debt collection. A debtor comes over
8 to me and asks me a question saying is this a valid
9 judgment, and I look it up and I see this is a valid.
10 They're not taking any steps to actually execute the
11 judgment. I'm just answering a legal question.

12 Is that debt collection?

13 Q. Well, you tell me. It's your practice.

14 A. No, what I'm saying -- no, but you're asking
15 me now to break down percentage. And so if you're
16 asking me -- if you want to qualify that as debt
17 collection whether there was a great deal of --
18 depending if the number significantly increases, I
19 wouldn't qualify that as debt collection. So I would
20 say that you look at my actual time spent on debt
21 collection matters, I would say that my time spent
22 was probably less than five percent of my time.

23 Q. What was the other 95 percent spent on?

24 A. The other 95 percent was spent on my own
25 legal work, which is not debt collection.

1 J. NIERMAN

2 Q. What's your own legal work?

3 A. Commercial litigation.

4 Q. Plaintiff or defendants?

5 A. Both.

6 Q. For non payment?

7 A. Defense and non payment was the most common
8 thing.

9 Q. Plaintiff?

10 A. I did very, very little plaintiff's work.

11 In fact, I would have to -- I think -- my most
12 significant client was Mr. Englander whose name I
13 mentioned earlier. He had me on retainer, which
14 basically was if he had a matter, a legal matter, he
15 would come to me as his -- as his counsel. Most of
16 the overwhelming majority of his cases were defense.
17 I don't recall doing any plaintiffs work for him
18 since 2012, 2013. So 2016, I would say that I did --
19 the only debt collection I was doing was the work I
20 did for Recovery of Judgment LLC.

21 Q. About how many clients did the Law Offices
22 of J. Henry Nierman have in 2016?

23 A. I don't know.

24 Q. A hundred?

25 A. No, much less.

1 J. NIERMAN

2 Q. Less than 50?

3 A. Probably a couple dozen. Depending on --

4 Q. And what percent of those case, or those
5 clients rather, were including non payment?

6 A. That I was representing as plaintiffs?

7 Q. Plaintiff or defendants?

8 A. Most of them. Sometimes I get called up to
9 handle a lease. Most of them -- almost -- I would
10 say 90 percent of the work I did was defense.

11 Q. How often did anyone at Recovery of Judgment
12 ask you questions about debts and judgments?

13 A. Like a two-minute thing. Like look at this
14 paper. Like, tell me what you think.

15 Q. Any questions about debts and judgments?
16 You're kind of splitting hairs on what debt
17 collection is, right. You're splitting hairs on what
18 debt collection is. If you want to break it down --

19 A. This is --

20 Q. -- how many times were you asked questions
21 about debts and judgments?

22 A. In a week or what are you asking me?

23 Q. How about a day?

24 A. Less than once a day.

25 Q. How about a week?

1 J. NIERMAN

2 A. I would estimate probably like a question
3 would come up once or twice every three weeks.

4 Q. In 2016, how many documents, debt collection
5 documents, for Recovery of Judgment LLC have your
6 signature on them?

7 A. A lot. A lot.

8 Q. How many is a lot?

9 A. I couldn't even give a guess. It's
10 definitely a lot. It's definitely a lot.

11 Q. Would you consider that debt collection?

12 A. I don't know that I'm engaged in debt
13 collection. I mean, I don't know -- I haven't
14 researched this to say am I -- is that consider me
15 spending time on debt collection. When this is --
16 this is what I want to clarify for you. A large part
17 of judgment execution is document creation, document
18 production. The process basically is -- I mean, if I
19 would set up a form and say, okay, if you're sending
20 out information to party X, you're going to use this
21 form. That needs to be signed by an attorney. So I
22 have a stamp, so I stamp the information subpoena.
23 So this document that you show as Exhibit 2, or
24 whatever it is or exhibit -- a subpoena, that
25 signature there is my stamp. So it is my signature.

1 J. NIERMAN

2 The stamp was created by me, creating the signature
3 for purpose of creating a stamp, but as far as me
4 actually touching the document, very few of them that
5 I actually personally invest any time touching a
6 document. I would say that far less than a tenth of
7 one percent of all documents that went out of there
8 that I actually touched with my own fingers.

9 Q. To be clear, it's your testimony that
10 documents were created with your signature stamped to
11 them which you did not review?

12 A. What I would say is that documents which
13 would have my signature on them, they're not
14 documents that I sat down and went through. No.
15 They basically use a form that I created.

16 Q. And in 2016, how many such documents were
17 transmitted?

18 A. I have no idea.

19 Q. Was it more than a hundred?

20 A. I imagine so, yes.

21 Q. Was it more than five hundred?

22 A. I don't know.

23 Q. A thousand?

24 A. I'm not going to speculate. I have no idea.

25 Q. Are there any documents that would reflect

1 J. NIERMAN

2 how many times your signature appeared on a debt
3 collection device in 2016?

4 A. I think the records of WAK Enterprise
5 probably would have that.

6 Q. What would that record be?

7 A. I'm saying you go through their files and
8 you see documents that was sent on this particular
9 person. So if the information subpoena went out that
10 would have my signature on it.

11 Q. Is there a central database that was
12 maintained by Recovery of Judgment LLC that would say
13 how many kinds of restraining notices were sent? How
14 many kinds of information subpoenas were written?
15 Anything like that?

16 A. That seems doubtful. There would be no
17 purpose of that.

18 Q. How is that information tracked?

19 A. That would be tracked as you go into a
20 client and you see what documents were sent out for
21 client -- unto debtor X or debtor X on collection of
22 debtor X. You would see a list of documents that
23 went out.

24 Q. In all those documents that we're talking
25 about, would they list the Law Offices of J. Henry

1 J. NIERMAN

2 Nierman?

3 A. Probably. I haven't looked at them. I
4 haven't looked at the forms in a great -- in a long
5 time, but they would have my signature on them. They
6 would either have my name -- they would probably say
7 Law Offices of J. Henry Nierman with my signature.

8 Q. And would they identify the creditor as
9 Recovery of Judgment LLC?

10 A. That would depend on the case. There was
11 some cases that were owned by Recovery of Judgment
12 LLC. There were some cases that we purchased and put
13 in our name. There were some that name never
14 changed.

15 Q. What do you mean the name never changed?

16 A. When you enter -- when you're assigned a
17 judgment under New York law, when party A assigns a
18 judgment to party B, you're asking me -- it doesn't
19 change captions unless you so desire. So this case
20 will say Morrison versus Levy, even though it's own
21 by Recovery of Judgment LLC. All the rights and
22 interests are owned by Recovery of Judgment LLC. It
23 was legally assigned, and under New York law there's
24 an assignment that's recognized that all the
25 interests in that judgment now belongs to Recovery of

1 J. NIERMAN

2 Judgment LLC. When you create a document, however,
3 under New York law, unless you go to court and change
4 the caption, the caption retains the original caption
5 that it had when the judgment was first entered.

6 Q. Okay. But what about your signature block
7 on these documents. It would say --

8 A. It would look like -- it would look like --
9 I don't know. It would probably depend on the
10 document.

11 Q. Well, what difference would it make?

12 A. I'm saying is I'm not the attorney for
13 Morrison. I'm the attorney for Recovery of Judgment.
14 So I'm serving as the attorney for Recovery of
15 Judgment LLC. I'm not -- so -- I'm the attorney for
16 the party who is executing the judgment even though
17 their name is not reflected in the document itself.
18 Make sense?

19 Q. Yes. I want to nail this down.

20 A. I don't know how -- I'm not --

21 Q. So let's talk about the world of forms,
22 right. You're talking about forms where your
23 signature is stamped to it. To let's talk about the
24 world of forms that would go out. You tell me if
25 these are the documents that Recovery of Judgment

1 J. NIERMAN

2 would transmit. Restraining notices?

3 A. Some times, yes.

4 Q. Property executions?

5 A. I don't know. When you say property
6 executions, you mean, like, document that says
7 property execution?

8 Q. Property execution specific form under
9 Article 52 of the CPLR?

10 A. I don't recall property executions actually
11 being utilized by Recovery of Judgment.

12 Q. Okay. Wage executions?

13 A. So wage executions that's served by a
14 sheriff or a marshal, and there will be document that
15 we would actually prepare to give to the marshal to
16 serve so, yes. We definitely had a few of those and
17 that would -- yes, to answer your question.

18 Q. Information subpoenas?

19 A. Yes.

20 Q. Subpoenas duces tecum?

21 A. Yes.

22 Q. Okay. For all of those five categories of
23 documents, would the signature block be the same on
24 each of those?

25 A. Probably.

1 J. NIERMAN

2 Q. And what would the signature block say?

3 A. Probably what you see in the subpoena duces
4 tecum.

5 Q. Tell me. Would it say J. Nierman, attorney
6 for Recovery of Judgment LLC?

7 A. I haven't looked at this in years, so I
8 don't remember what I put in this form with respect
9 to whether it says specifically attorney for Recovery
10 of Judgment LLC or how it is identified. I don't
11 remember that. I don't -- certainly, this is too
12 important of a question for me to speculate about, so
13 I don't want to mislead you and I don't know the
14 answer.

15 Q. And in the year 2016, how many of those such
16 documents would have been transmitted?

17 MR. NIERMAN: I'm going to object and
18 ask you to specify.

19 BY MR. NAHOUM:

20 Q. I've given you five categories of documents.
21 I can go through them again. Restraining notices,
22 property executions, wages executions, and
23 information subpoenas and subpoena duces tecum?

24 A. Uh-huh.

25 Q. Right. In 2016, how many of those

J. NIERMAN

categories would be transmitted by you?

A. There's five categories, probably all five.

Q. How many collectively?

A. How many documents we sent out in total?

Q. Right.

A. I have no idea.

Q. Is it more than 500?

A. I couldn't even speculate that. I have no idea.

Q. And what percentage of those documents did you review before they were sent?

A. I'm not sure what your question is asking. You're saying --

Q. Well, did you --

A. I want to make sure I'm understanding you correctly because I don't want to misspeak. You're saying, like, if a document was created using this form of XYZ --

Q. Let me be very specific. Let me be very specific, okay.

A. Go ahead. Okay.

Q. You have these forms. A document was spit out from the printer with your signature on it at some point in time, folded up and put in an envelope

1 J. NIERMAN

2 with postage on it and mailed out?

3 A. Right. And my signature is stamped on it.

4 Q. Okay. We agree.

5 How many such documents did you review
6 before they were mailed?

7 A. When?

8 Q. In 2016.

9 A. I would spot check documents from time to
10 time, but I don't know. I mean, did I actually
11 review, like, the whole document?

12 Q. Yes.

13 A. I don't know. I don't know.

14 Q. Okay. And the ones that you did review, for
15 how long did you review them?

16 A. I won't spent more than 30 seconds looking
17 at a document.

18 Q. And what would a review of the document
19 entail? What would you do in reviewing the
20 documents?

21 A. I'd make sure that the form was proper. I
22 make sure that the -- that would pretty much be it.

23 Q. Would you look at the underlying data?

24 A. No. No, I didn't do that.

25 Q. Did the Law Offices of J. Henry Nierman have

1 J. NIERMAN

2 any interns in 2016?

3 A. Probably.

4 Q. How many?

5 MR. NIERMAN: I'm going to object and
6 say asked and answered. I didn't know this
7 answer an hour and a half ago. I'm not
8 going to know it now.

9 BY MR. NAHOUM:

10 Q. At what location did the interns working for
11 the Law Offices of J. Henry Nierman in 2016 work?

12 A. They would work in the office with Vera.

13 Q. They would work in the office of Recovery of
14 Judgment LLC?

15 A. Correct.

16 Q. Did they take direction from anyone else
17 other than you?

18 A. Vera much more than from me. They would be
19 trained and --

20 Q. I'm sorry. This is one of those moments
21 where I want to make sure we're clear about who I'm
22 asking a question of, okay?

23 A. Okay.

24 Q. The question was, in 2016, did the Law
25 Offices of J. Henry Nierman have any interns?

1 J. NIERMAN

2 A. Oh, no. Definitely not. I thought you were
3 asking about Recovery of Judgment LLC.

4 Q. I got it. That's one of the moments I
5 warned of earlier. I wanted to make sure it's good?

6 A. I appreciate you doing that.

7 Can I take a moment to use the bathroom?

8 Q. Yeah. Let's take five minutes.

9 A. Okay.

10 (Whereupon a break was taken at
11 12:56 p.m.)

12 MR. NAHOUM: Back on the record.

13 BY MR. NAHOUM:

14 Q. Just a couple more questions on the Law
15 Offices of J. Henry Nierman and then we'll move onto
16 other material.

17 What, if any, document retention policy does
18 the Law Offices J. Henry Nierman have?

19 Well, strike that.

20 Did it have in 2016?

21 A. I'm not sure what you mean by policy?

22 Q. Let's go slower. In 2016, did the Law
23 Offices of J. Henry Nierman have a document retention
24 policy?

25 A. It was nothing written.

1 J. NIERMAN

2 Q. Okay. Describe it. What was your policy?

3 A. I had files that I would maintain and hold
4 onto for things that I dealt with.

5 Q. Did you have electronic files?

6 A. No. Everything was -- everything I kept
7 would have been hard copies.

8 Q. Do you litigate in court, sir?

9 A. Yes.

10 Q. Do you --

11 A. If I need a document and it's been e-filed
12 or I can pull it up on e-file, I'll save it on my
13 computer. I guess when you say save e-files, so on
14 my computer I'll have -- I'll create a file for a
15 client and then all the files that I have or the
16 files of my adversary, I'll save appropriately under
17 that client's folder.

18 Q. Do you keep an electronic folder within
19 windows for a client in a matter and a document file;
20 is that fair?

21 A. Yes, yes.

22 Q. What is your retention policy for such
23 electronically stored documents?

24 A. I save files that I'm working on.

25 Q. For how long do you save them?

1 J. NIERMAN

2 A. I usually will save them -- it will depend
3 on the clients and the matter. I don't actively
4 destroy any of them. So when you say how long do I
5 save them, I'm never thinking, oh, okay. This is a
6 file I need to destroy. So anything that I'm working
7 on for my clients, I'll have on a computer. Does
8 that make sense?

9 Q. Did you save Recovery of Judgment LLC files
10 on your computer?

11 A. No. I mean, if I worked on something, what
12 I would do is, so I had a computer when I was working
13 there that was designated as being my computer and it
14 was in my room. And files that I actively worked on,
15 let's say, in theory, if I wanted to respond to this
16 letter, so there would be a copy of that letter that
17 I was drafting in response on that would have saved
18 on that computer.

19 Q. Would any Recovery of Judgment LLC records
20 be stored on a Law Offices of J. Henry Nierman
21 computer?

22 A. Law Offices of J. Henry Nierman doesn't own
23 any computers. I own computers. I personally own
24 computers.

25 Q. Well -- yeah. Would any Recovery of

1 J. NIERMAN

2 Judgment LLC records be stored on any of your
3 computers?

4 A. Some records are there, yes.

5 Q. What records?

6 A. So the most -- if you recall earlier I
7 testified that we changed systems and updated
8 computers, so at that time I got a new computer. So
9 any records, anything that I generated or created
10 would be -- from that time would be on that computer.

11 Q. So before you changed the computers was
12 anything from the old system moved over to the new
13 system?

14 A. I don't recall -- oh, yeah. Actually, I
15 should correct that. I believe I -- again, I'm
16 thinking back like six years now. So my recollection
17 is that I had something from, like, old stuff from
18 Recovery of Judgment LLC that I did transition onto
19 the new computer in case I needed to use something
20 yet again or to tweak or alter a letter appropriately
21 for a new case. So I think I probably had something
22 where they were all saved under conglomerate folder
23 of old stuff. I haven't really thought about it, but
24 I probably do have stuff from that old computer that
25 was transitioned to the new one.

1 J. NIERMAN

2 The new one, by the way, for the purposes of
3 being clear, it's not a new computer today by any
4 stretch. I mean, that was a refurbished computer
5 when we got. So --

6 Q. When was that?

7 A. This is when we updated our computer system.

8 Q. Do you know what year that was?

9 A. I guessing 2014, 2015.

10 Q. Where is that computer right now?

11 A. It's in my house.

12 Q. And on that computer in your house right now
13 there are Recovery of Judgment LLC records, yes?

14 A. Yes.

15 Q. Are there Recovery of Judgment LLC records
16 on that computer in your home right now relating to
17 this matter?

18 A. No. Actually let me strike that. I don't
19 know of any.

20 Q. Okay. So I'm going ask that after the
21 deposition is completed, you go back and look and see
22 if there's any Recovery of Judgment LLC records on
23 the computer stored in your house right now, and if
24 they are related to this matter, you produce them
25 all.

1 J. NIERMAN

2 MR. NIERMAN: That's a reasonable
3 request and I'll take that under advisement.
4 At the same time, I'll be clear, just to be
5 clear, I'm saying taken under advisement
6 because that's just how I was trained as an
7 attorney to respond to a request like that.
8 I recognize it's a valid request, and I
9 anticipate following your requests.

10 BY MR. NAHOUM:

11 Q. Have you deleted, since 2016, any Recovery
12 of Judgment LLC records from your computer?

13 A. Not to my recollection, no.

14 Q. Are you aware whether any Recovery of
15 Judgment LLC records relating to this matter have
16 been deleted?

17 A. I'm not aware of anything like that, no.

18 Q. Are any Recovery of Judgment LLC records on
19 which the Law Offices of J. Henry Nierman or you
20 Mr. Nierman as an attorney, are any such records
21 stored in the cloud?

22 A. Yes.

23 Q. Do you know what cloud platform it is?

24 A. That's the same platform that we were
25 talking about earlier that I don't know the name. I

1 J. NIERMAN

2 can tell you that WAK Enterprises certainly still has
3 access to it. In fact, during this course of
4 discovery they've accessed it.

5 Q. How do you know?

6 A. They turned over records. They're the ones
7 who produced the copy of the assignments of the
8 judgment. So if they had those, I cannot understand
9 why they wouldn't everything else that was related to
10 Mr. Levy.

11 Q. Do you still have access to that cloud-based
12 storage?

13 A. No, I do not.

14 Q. Do you have any liability insurance?

15 A. No.

16 Q. Do the Law Offices of J. Henry Nierman have
17 any form of insurance?

18 A. No.

19 Q. Has the Law Offices of J. Henry Nierman or
20 your J. Henry Nierman attorney, ever been sued for
21 violation of the Fair Debt Collection Practices Act
22 beyond this particular case?

23 A. Well, I think I mention the earlier thing
24 which was withdrawn. It was withdrawn.

25 Q. Do you have those papers?

J. NIERMAN

A. No.

Q. Has the Law Offices of J. Henry Nierman or you, Mr. Nierman attorney, ever been the subject of court-ordered sanctions?

A. No.

Q. I'm going to ask you some questions about the underlying lawsuit that resulted in the judgment.

A. Okay.

Q. You're familiar with the matter the Matt Morrison against Shaul Levy?

A. Yes.

Q. How are you familiar with that matter?

A. Well, it was one of our ROJ clients and there's this pending lawsuit.

Q. Did ROJ purchase the judgment in that matter?

A. I believe it was assigned to ROJ. Yes, it was assigned to ROJ.

Q. Okay. So you said that it was ROJ's client. Is ROJ a law firm?

A. ROJ would execute -- ROJ, no is not a law firm. They are a collection service -- they are a collection agency that work on behalf of third parties. This case as I recall was a very old case

1 J. NIERMAN

2 of ROJ's. In fact, I think, as I recall this case
3 actually came to us before I was even involved with
4 ROJ. That's how long it was kicking around in ROJ's
5 system.

6 When Shawn first set up ROJ, part of the
7 structural setup was that he would have a judgment
8 creditor execute an assignee in favor of Recovery of
9 Judgment and contemporaneously therewith, he would
10 have the client execute a contingency agreement which
11 would spell out the amounts of money that Recovery of
12 Judgment LLC would retain in the event of successful
13 execution of a judgment and how much would be turned
14 over to the original judgment creditor. That's what
15 happened here in this case.

16 Q. So that was the business model of ROJ in
17 2016?

18 A. That was really the business model of ROJ
19 initially. I'm not sure if we kept that same system
20 on, but that certainly is -- that certainly was in
21 place at the time that Mr. Morrison retained ROJ and
22 that was what we did with his particular case.

23 Q. So the judgment that ROJ would be assigned
24 would not be paid for outright in cash like a client
25 with consumer debt buyer. This is sort of a

J. NIERMAN

contingency basis?

A. That were some cases that ROJ purchased, but this was not one of them.

Q. Did Recovery of Judgment LLC or anyone from Recovery of Judgment or you know Mr. Morrison before the judgment was signed?

A. I don't know whether Shawn knew him or not. As I said, I believe this case started before I was with ROJ.

Q. Did you represent Mr. Morrison in the underlying case?

A. No, I did not.

Q. When the judgment was assigned from Mr. Morrison to Recovery of Judgment LLC, was an assignment of judgment filed with the court?

A. Yes.

Q. Was notice of that assignment provided to Mr. Levy?

A. I do not know. I assume so.

Q. Who signed the notice of assignment that was filed with the court on behalf of Recovery of Judgment LLC?

A. I just said I do not know, so I won't be able to answer that question.

1 J. NIERMAN

2 Q. You said you didn't know about the notice to
3 Mr. Levy. My question was the document, right, the
4 assignment of judgment that particular document, the
5 notice of assignment of judgment.

6 You understand the document I'm referring
7 to?

8 A. Are you talking about the document that
9 effectuated the assignment itself?

10 Q. The document that notifies the court that
11 the judgment creditor had been replaced with
12 assignee?

13 A. That would have been Shawn.

14 Q. He would have signed the notice to the
15 court, court pleading?

16 A. Yes, it's very possible that he would have.
17 I haven't looked at that document, so I want to --
18 actually, I want to strike that answer and tell you
19 that I do not know that for sure. Because that's
20 what I -- that's what I assume has happened and I
21 don't think there's any problem with the non attorney
22 signing on behalf of our corporation.

23 He had -- and again, as I said to you
24 earlier, when I met him he had an uncommon
25 understanding of judgment execution and the legal

1 J. NIERMAN

2 system. So if he had -- if he had managed to produce
3 o that on his own, I would not be remotely surprised
4 because he knew --

5 Q. So when the judgment was assigned from
6 Mr. Morrison to Recovery of Judgment LLC, a notice
7 was filed with the court. Was a similar notice given
8 to Mr. Levy?

9 MR. NIERMAN: I'm going to object as
10 asked and answered.

11 THE WITNESS: I don't know.

12 BY MR. NAHOUM:

13 Q. When the judgment was assigned from
14 Mr. Morrison to Recovery of Judgment LLC, was a
15 change of counsel filed with the court?

16 A. I don't know.

17 Q. Did you ever file change of counsel in
18 matters where Recovery of Judgment LLC was assigned a
19 judgment?

20 A. I believe so. I'm thinking back now to,
21 like, 2014, which is when that practice was more our
22 norm. As I think I indicated earlier, and if I
23 didn't I'll indicate it now, there was a certain
24 point in time when we stopped doing the assignment of
25 the judgments.

1 J. NIERMAN

2 So we certainly didn't do it as widespread
3 as we had when we first began our operations. It was
4 just too many reasons to not do it that way. And I
5 do recall that prior to changing over that I had to
6 list myself as attorney of record for the assignee.
7 So I believe that there were some cases that
8 happened. Again, I do not believe that's what
9 happened in this case because I don't recall this
10 case coming to Recovery of Judgment LLC after I
11 joined on. Now, is it possible that I came on and
12 did that on behalf of Recovery of Judgment LLC in
13 this case even if it was in their file? It's
14 possible. I really don't remember doing that though.

15 Q. What would have been the reason not to file
16 the assignment of judgment with the court?

17 A. Anytime a judgment was assigned -- this is
18 what I want to get clear, anytime a judgment was
19 assigned, it was filed with the courts to make it a
20 valid assignment.

21 Q. Okay. What about notice? Did every one of
22 those cases where assignment of judgment -- a notice
23 of assignment of judgment was filed with the court,
24 was there also notice given to the judgment debt?

25 A. I believe so. I believe so because as I

1 J. NIERMAN

2 recall that was a requirement in properly assigning
3 the judgment. So I believe that was the case, but
4 I'm not -- you asked me if there were cases that
5 happened. I'm certainly not looking at their files
6 now. I haven't looked at those files in many years,
7 and I'm not going to tell you yes, it was because I
8 do not know the answer to it.

9 Q. And who at Recovery of Judgment LLC would be
10 the one to make those decisions?

11 A. Decisions on what?

12 Q. On whether or not it was appropriate to file
13 a notice of assignment of judgment to give notice to
14 debtor that a judgment had been assigned. Whose job
15 was it to make those decisions?

16 A. I feel like we're talking in two different
17 wave lengths here so I want to try to get on the same
18 page as you.

19 Q. Yeah.

20 A. Okay. We as -- Shawn and I jointly when we
21 first began set up a method of operation as to how we
22 were going to take judgments in, what we were going
23 to do with them, and how we were going to process
24 those cases to try and effectuate execution as
25 efficiently as possible. Initially, that -- part of

1 J. NIERMAN

2 that process was continuing practice that he had
3 employed prior to my purchasing into the company.
4 That practice that he had employed was to have all
5 our clients assign their judgments to Recovery of
6 Judgment LLC.

7 Now, as you're aware as an attorney, the
8 process of assigning judgments is a multi-faceted
9 process. There is the execution of documents. It's
10 got to be done before a notary. It's got to be
11 properly notarized. You have to notify the court who
12 the new attorney is that's working on behalf of the
13 case, and all of these various matters. What
14 happened with respect to specifically Shaul Levy,
15 I'll tell you that the documents therein that have
16 been reported speak for themselves. You're asking
17 with respect to notice thereafter being served upon a
18 judgment debtor, and I'm telling you that if a notice
19 was ever required to be served, that was part of our
20 process was to serve a debtor. Make sure to follow
21 to every step to the letter as to what we had to do.

22 Q. And you testified a number of times today
23 that your partner was very well versed in debt
24 collections, right?

25 A. Yes, that's correct.

1 J. NIERMAN

2 Q. Okay. So whose decision was it to -- who
3 made the decisions on when to give notice? Was it
4 you the lawyer or was it your partner?

5 A. Notice to the court?

6 Q. Notice to the court and notice to the
7 judgment debtor?

8 A. That was a joint decision that we made to
9 give notice to the court and notice to -- by the time
10 I came on, that was a joint decision to give notice
11 to the court and notice to the debtor.

12 Q. In this case, Mr. Morrison's judgment, who
13 made the decision whether to give notice or not give
14 notice?

15 A. I cannot -- what I'm saying to you is I
16 don't remember this case. I'm telling you what our
17 policy was. I don't -- this was not anything
18 memorable. Now that we're sitting here today having
19 litigation, now it's obvious this case sticks out
20 like a sore thumb. But with respect to what our
21 overall policy is, I'm being crystal clear with you
22 about what it was. Now you want me to narrow it down
23 and say what decisions did you Joe Nierman make or
24 what did Shawn make, and I'm telling you this is not
25 a case that he and I discussed separate and apart

1 J. NIERMAN

2 from any other case that we were handling. So I
3 can't give you a definitive answer to that other than
4 this is what we did.

5 Q. You're the 30(b)(6) notice here for Recovery
6 of Judgments, right? You're the person produced
7 who's most knowledgeable about the events of this
8 litigation, right?

9 A. Uh-huh.

10 Q. And it's your testimony that you have no
11 recollection whatsoever what happened with this
12 particular case in terms of the assignment of
13 judgment?

14 A. That's not at all what I'm saying. What I'm
15 saying to you is I'm the one who's most knowledgeable
16 with respect to what our policies -- what legal
17 policies we had set in place and with respect to what
18 legal, you know, what legal matters and procedures
19 were employed, which I'm giving you that information.
20 That information is -- there's nothing specifically
21 unique about Shaul Levy other than the fact that
22 we're litigating actions that happened with respect
23 to him. That's nothing that Shawn is going to be
24 able to say, oh, hey, on this particular case we did
25 this. You think he's going to know something

1 J. NIERMAN

2 specific about it? God bless. I can't even imagine
3 that he would.

4 Q. And you think that because your volume of
5 cases was so vast?

6 A. We did have a pretty significant volume of
7 cases, yes. We had a lot of cases.

8 Q. Now these policies that you're talking
9 about, were these memorialized in writing?

10 A. Yes.

11 Q. Where is that writing?

12 A. As I indicated in our discovery responses, I
13 don't have anything.

14 Q. Were those policies once stored on your
15 computer, the one in your home?

16 A. No.

17 Q. Where were they stored?

18 A. They were produced in, like, a hard copy.

19 Q. How many were produced?

20 A. Ever? I don't know.

21 Q. Who were they distributed to?

22 A. They're distributed to anyone who ever
23 worked for Recovery of Judgment LLC or our interns.

24 Q. Who wrote those policies?

25 A. I did together with Shawn.

1 J. NIERMAN

2 Q. When was that?

3 A. I would say early on when we first drafted
4 stuff.

5 Q. Was that -- sorry.

6 A. When first set up our structure. So I
7 wanted to be sure that we had -- that everything was
8 crystal clear as to how we were going to operate.

9 Q. What year was that?

10 A. I don't remember what year I bought into
11 this company. I'm guessing it was 2012 because I
12 always think of the duration of our -- my tenure
13 there as being five years long. So I'm
14 speculating -- if you try and tell me, you know, push
15 it down, was it before this or after this, I would
16 tell you I would come in around 2012.

17 Q. So you bought into the company in 2012, and
18 as part of establishing this new business for
19 yourself you wrote policies on what to do on
20 acquiring judgments for collections; is that fair?

21 A. Yes.

22 Q. Okay. And you wrote those policies on a
23 place that would be stored on a computer; is that
24 fair?

25 A. Yes.

J. NIERMAN

Q. And then you would print them and distribute them to people work for Recovery of Judgment LLC; is that fair?

A. Okay.

Q. And did you ever amend or update those written policies?

A. I don't recall doing that.

Q. But you testified a few moments ago that you had changed the way you took assignment of judgments, right?

A. What we changed was the decision to not take assignments being that we stopped having them be formally assigned so that --

Q. What was the structure after that?

A. If the client would come in they -- the judgment was not always -- as I recall, the judgment was not always assigned to Recovery of Judgments.

Q. When was that decision made?

A. I don't recall.

Q. Was it before or after --

A. I'm trying --

Q. Sorry. Go ahead.

A. I'm trying to think whether it was before or after 2015 when we got those new computers. I don't

J. NIERMAN

remember.

Q. This case, the judgment was acquired by Recovery of Judgment LLC before the change in policy; is that right?

A. Yes, before.

Q. For documents that would be produced by Recovery of Judgment LLC, court documents, remember those five categories of enforcement devices we talked about earlier, right?

A. Okay.

Q. The documents like that, what would your signature block look like?

A. I thought we went through this already, didn't we?

I don't have copies of those forms up. You're asking me would they look the same. I'll tell you this. Every subpoena would like this one.

Q. So what you're saying then is, even if Recovery of Judgment LLC did not take assignment of the judgment, the signature block would say J. Nierman, attorney for Recovery of Judgment LLC; is that right?

A. Is that what it has on the block there? I wasn't even looking at the block.

1 J. NIERMAN

2 Q. I'm asking you. I'm asking you about the
3 signature?

4 A. Okay. So what I'm saying to you is I
5 haven't looked at these forms in many years. So
6 you're asking me what was written in the block on
7 these forms that I created not in 2016. I created
8 many years before 2016, and what was written in those
9 blocks, and I'm telling now, you're asking me in
10 2020, I'm telling you I don't know.

11 Q. Here's what I'm trying to understand,
12 Mr. Nierman.

13 A. Okay.

14 Q. Recovery of Judgment LLC is not a law firm,
15 correct?

16 A. Correct.

17 Q. And they're being hired to collect on
18 judgments, right? Judgments that have not been
19 assigned to them; is that right?

20 A. This debt was assigned to them though.

21 Q. I know. But you said there was a change in
22 policy.

23 A. I'm believe --

24 Q. So I'm trying to understand what happened
25 after that change in policy.

1 J. NIERMAN

2 A. I don't -- I can't imagine how this is
3 relevant to Mr. Levy at all, but for the sake of
4 argument, let's assume that they were not assigned.
5 Now, if I'm acting as attorney for Recovery of
6 Judgment, Recovery of Judgment is retained by Mr. X
7 judgment creditor to assist in executing that
8 judgment. I am now serving as an attorney for
9 Recovery of Judgment. That's an accurate statement.
10 That's not an inaccurate statement. I'm not sure --

11 Q. And it's an accurate statement that Recovery
12 of Judgment LLC is not a law firm?

13 A. That's correct.

14 Q. So this is what I'm confused about, sir.
15 Who was hired? Was it Recovery of Judgment? Was it
16 the Law Offices of J. Henry Nierman, or was it
17 J. Henry Nierman, attorney at law?

18 A. It was definitely not me or the Law Offices
19 of J. Henry Nierman that's been hired. So, again,
20 I'm telling you what my recollection is to the best
21 of my recollection, and I think it's pretty evident
22 that anyone that watches this whole thing, I'm being
23 as -- I'm doing my best to give you my best
24 recollection as to how we operated and what we were
25 doing. I'm not withholding any information. I'm

J. NIERMAN

being as direct with you as possible. My recollection is that there was a point in time where we changed our function as to how we did it. We stopped having everything assigned. That is my recollection. I don't know that that's the case. I believe that's the case. I don't think there's anything problematic from a legal perspective for Recovery of Judgment serving as a debt collection agency working on behalf of a third party without taking assignments without being an attorney. They don't have to be an attorney to do that. They can assist on one the same way you can pay someone to set up a zoom meeting for and you don't have to be -- they don't have to be an attorney to do that. The steps that they're taking there, I don't think that there's anything wrong with what they were doing. Do you believe that I'm mistaken --

Q. Somebody was sending subpoenas, were they not, sir?

A. Oh, I don't know about that. That's your speculation. I don't know about that.

Q. You tell me. Was Recovery of Judgment LLC sending subpoenas in cases in which it was listed as the judgment assignee where it didn't take assignment

1 J. NIERMAN

2 of the judgment?

3 A. Oh, whoa, whoa. You just put words in my
4 mouth I never said.

5 Q. Okay. Clear it up for me.

6 A. Not once did I ever say that Recovery of
7 Judgment held itself out as a judgment assignee in a
8 case where they were not a legal judgment assignee.
9 No such thing ever happened or would it ever had
10 happened.

11 Q. That's fine. That's why I asked you about
12 the signature block. What does it say?

13 A. I don't -- and I think I answered. The
14 signature block on our subpoenas look like the
15 signature block you have here in Exhibit 2.

16 Q. So okay. So your testimony is then in cases
17 in which Recovery of Judgment LLC did not take
18 assignment of a judgment, but was hired to collect on
19 a judgment, the signature block would say J. Henry
20 Nierman, attorney for Recovery of Judgment LLC?

21 A. No. That's not what I'm saying because I
22 would --

23 Q. What would it say?

24 A. I don't know that any subpoena duces tecum
25 was ever sent out for a client who we did not take

J. NIERMAN

assignments.

Q. How about a restraining notice?

A. No.

Q. Wage execution?

A. I don't know. What I'm saying is I don't know that any of those executions, any of those efforts which would effectuate seizure of money, restraining money. I don't know that that ever happened once on a case that had not actually been legally assigned to Recovery of Judgment.

Q. But there would be documents that would answer these questions one way or the other, yes?

A. Probably.

Q. Where would those documents be located?

A. All of these documents would be in possession of WAK Enterprises. I don't know why -- I mean, there are questions -- that's an answer I've told Mr. Rothfarb for the last two years.

So you're asking me what happened in cases where there was no assignment. I don't -- like I said, I don't think we continued that system throughout the duration of Recovery of Judgment. I am positive that not once did I ever hold out Recovery of Judgment as being a -- as being an

1 J. NIERMAN

2 assignee of a judgment that was not assigned to it.
3 That would be fraud. I never once would ever
4 consider doing something like or risking my law
5 license over something so stupid.

6 Q. When Recovery of Judgment LLC was assigned
7 the Morrison judgment, what documents were
8 transferred to Mr. Morrison to Recovery of Judgment
9 LLC?

10 A. I'm sorry? What's your question? I don't
11 understand.

12 Q. Yeah. I'll try to ask it better.

13 When the judgment from Mr. Morrison against
14 Mr. Levy was assigned to Recovery of Judgment LLC,
15 what, if any, documents were transferred from
16 Mr. Morrison or Mr. Morrison's attorney or anybody
17 else to Recovery of Judgment LLC?

18 MR. Nierman: I'm going to object.

19 That calls for speculation.

20 BY MR. NAHOUM:

21 Q. Were there any documents transferred?

22 MR. Nierman: And I'm going to object
23 on the basis it calls for speculation. I
24 answered earlier this happened before I was
25 involved with Recovery of Judgment. I will

J. NIERMAN

tell you that --

BY MR. NAHOUM:

Q. Do you know the answer?

A. The answer I know is this: On our system we have a copy of the underlying judgments. It was a consent to judgments that was executed, that Mr. Levy and/or his counsel consented to this judgment. A judgment that he subsequently claimed was fraudulent and did not exist. How that happened, I don't know.

Q. Was there any other judgments -- were there any other documents that were provided to Recovery of Judgment LLC? It's a simple question. It's not a trick question.

A. No, I understand that. I'm telling you I don't know. I don't have access to these files. You think I'm making that information up.

Q. And if those files exist, they'd be with WAK Enterprises, correct?

A. That's correct.

Q. Recovery of Judgment LLC was provided a copy of the judgment; is that right?

A. Yes.

Q. Did you --

A. I reviewed it subsequent to the commencement

1 J. NIERMAN

2 of this litigation. Did I look at it beforehand, I
3 don't recall. I know 0when I looked at it I was
4 astonished that anyone would come in with a claim in
5 this letter that Mr. Schlanger wrote dated 7/27, that
6 this judgment was fraudulent considering his own
7 client had consented to entry of this judgment.
8 Perhaps you can explain that to us.

9 Q. I'm going to refer your attention back to
10 Exhibit 2. This was the subpoena, okay.

11 A. Uh-huh.

12 Q. You used this earlier to refresh your
13 recollection, but now I'm going to ask you some
14 questions about this document in particular. I'm
15 going to ask you to take look at it.

16 A. Which part would you like me to look at?

17 Q. Well, look at the whole document and tell me
18 what it is?

19 A. It looks like a subpoena.

20 Q. How do you know that?

21 A. It says on it subpoena duces tecum.

22 Q. Who drafted this document?

23 A. This document would be something I drafted.

24 Q. It stays in a form?

25 A. Yes.

1 J. NIERMAN

2 Q. And turning your attention to very last page
3 there, is that your signature?

4 A. It looks like my signature stamp on it, yes.

5 Q. Mr. Nierman, we've talked about it a few
6 times already, this is a stamp signature. That's not
7 actually your signature pen to paper, right?

8 A. That's correct.

9 Q. Did you read this document before you signed
10 it?

11 A. I don't remember.

12 Q. Was it your usual customary practice to read
13 subpoenas before you signed them?

14 A. Sometimes they were signed on my behalf.

15 Q. Who would be responsible for making the
16 decision whether or not you read a subpoena before
17 you signed it?

18 A. I would make that decision. Subpoenas were
19 going out and I would -- so sometimes I would be,
20 like, you know, I would ask to look at a subpoena.

21 Q. What factors would you consider in
22 determining whether or not to read the subpoena or
23 not?

24 A. Really that was -- it would not be because
25 this is a Levy case and I want to make a owner view

1 J. NIERMAN

2 this document. It would be a matter of just
3 reviewing and making sure and maintaining that our
4 office is complying with the FDCPA in the way it's
5 producing documents. So I would periodically come in
6 and look over work that was being generated to ensure
7 that there was not some sort of gross mishap that was
8 occurring. So is it possible that I saw this? Yes.
9 Is it definite I saw it? Far from it.

10 Q. Okay. I asked you if you reviewed this
11 document before you signed it. I'm going to ask you
12 a slightly different question.

13 A. Well, you asked -- okay. Go ahead.

14 Q. Did you review this document before it was
15 mailed?

16 A. I'm going to give you the same answer. I
17 don't know.

18 Q. Who, if anyone, at Recovery of Judgment LLC
19 approved this document?

20 A. Vera.

21 Q. And do you know if she read it before you
22 signed it?

23 A. Okay. When you say you signed it, again,
24 I'm going to be clear, it's a stamped signature.

25 Q. What is that stamp supposed to indicate?

1 J. NIERMAN

2 A. The stamp is -- means I gave my authority
3 for this document to be produced.

4 Q. Okay. We're in agreement on what signed
5 document means. Who, if anyone, at Recovery of
6 Judgment LLC approved this document before your
7 signature was stamped on it?

8 A. So I would answer the question thusly. I
9 approved this form. This form is something I
10 generated and something that I would periodically
11 review to ensure they were complying with the work
12 product that I had and not that someone came in there
13 and all of a sudden inserted 50 different questions
14 or changed the language, et cetera. So that being
15 the case, what I would tell you is that my hand is
16 involved in the form which led to the creation of
17 this document and the procedures which set up for
18 this document to be served.

19 Q. Okay. And so because it's a form, there is
20 a certain documents -- excuse me -- certain
21 information and data that would get inputted into a
22 system, and that information would merge with the
23 form and out would come the finished document; is
24 that right?

25 A. Yeah. All this would come through that

1 J. NIERMAN

2 platform that we were discussing earlier that you
3 were basically -- my recollection, again, this goes
4 back four years -- my recollection is you basically
5 would pull up a client or you would pull up a client
6 and you would say generate information subpoena or
7 document subpoena or whatever, subpoena duces tecum
8 and then it would just be generated out. They would
9 take that document, take my stamp, stamp my name onto
10 it, and then mail it out. Periodically, I would
11 review to make sure that no one had tinkered with the
12 form to ensure that it was actually something that
13 was complying with the FD CPA.

14 Q. Who did the data entry?

15 A. I don't know.

16 Q. Was it you?

17 A. Definitely not.

18 Q. Did you review the data that was entered?

19 A. On this particular case, I don't recall
20 reviewing it.

21 Q. If you were reviewing this, would you take a
22 copy of a subpoena and take a copy of the judgment
23 and look at the two together and make sure the
24 information lined up?

25 A. Sometimes. I don't recall -- I do not

1 J. NIERMAN

2 recall doing that in this case.

3 Q. What would make you do it in the case where
4 as other cases you wouldn't?

5 A. As I said, it would be like a random sort of
6 sampling kind of thing.

7 Q. Turning your attention back to the first
8 page of this subpoena Exhibit 2, to whom is this
9 subpoena addressed?

10 A. Shaul Levy, 5757 Collins Avenue, apartment
11 1706, Miami Beach, Florida 33140.

12 Q. And do you have any reason to believe the
13 document wasn't mailed to the address listed on that
14 "to" line?

15 A. I do not.

16 Q. When was this document mailed?

17 A. I don't know.

18 Q. It was signed December 10th, 2016; is that
19 right?

20 A. Okay.

21 Q. Is there any reason to think it wouldn't be
22 mailed somewhere around that time?

23 A. It would seem likely.

24 Q. Who was responsible for doing the mailing?

25 A. Vera.

1 J. NIERMAN

2 Q. You're a New York attorney, can you describe
3 what the process is for serving a subpoena out of
4 state?

5 A. Serving a subpoena out of state? It would
6 have to comply with -- it would have to comply with
7 New York law.

8 Q. Do you know what New York law is for serving
9 an out-of-state subpoena?

10 A. I never served out-of-state subpoenas, so I
11 am -- I would have to refresh my own recollection as
12 to what requirements would have to be undergone. I
13 don't want to answer offhand.

14 Q. Okay.

15 A. Again, back then I was doing judgment
16 execution on behalf of Recovery of Judgment and these
17 sort of issues would come up, these sort of questions
18 would come up and pass my attention far more
19 frequently than they would today, so...

20 Q. Did the service of Exhibit 2, this subpoena,
21 comply with New York State procedure for service of
22 an out-of-state subpoena?

23 MR. NIERMAN: I'm going to object on
24 the basis that calls for a legal conclusion.

25 BY MR. NAHOUM:

1 J. NIERMAN

2 Q. Sir, you're a lawyer at a deposition.
3 You're named as a defendant and so is your law firm.

4 A. And.

5 Q. So you're more than qualified to answer the
6 question. Based on your knowledge, did service of
7 this subpoena to an out-of-state defendant comply
8 with New York procedure?

9 A. Well, you're assuming that it's a -- that's
10 an attempt to serve a subpoena.

11 Q. Okay. Please take a look at Exhibit 3.

12 A. Okay.

13 Q. All right. For purposes of identification,
14 this is appears to be a letter, Law Offices of --
15 letter head -- Law Offices of J. Henry Nierman, dated
16 December 10th, 2016.

17 Do you see that?

18 A. I do.

19 Q. Okay. Could you just hold it up so I can
20 make sure we're looking at the same letter.

21 Yeah. Okay.

22 Please read under Dear Mr./Mrs. Levy. Can
23 you just read what that paragraph says?

24 A. Dear Mr./Mrs. Levy, enclosed herein, please
25 find a subpoena duces tecum directing you to appear

1 J. NIERMAN

2 for a post-judgment deposition on December 16th, 2016
3 [sic] at 10:00 a.m., and turn over your financial
4 information. These financial documents include tax
5 returns, bank statements, and other documents as
6 detailed therein.

7 Q. Stop right there. I'm trying to refresh
8 your recollection here because a moment ago you
9 testified that Exhibit 2 was not service of a
10 subpoena; is that right?

11 A. I don't know that it is service of subpoena.
12 I don't think it's a valid service of subpoena. I
13 don't think it's something that is enforceable.
14 Certainly not -- I would not -- if you ask me my
15 legal opinion of it, I will tell you my legal opinion
16 is that it's not a legally enforceable subpoena.

17 Q. Okay. Let's be clear then. My question was
18 did service -- I'll use a different word so we don't
19 use a charged word here. Did the mailing of
20 Exhibit 1 -- excuse me, Exhibit 2, comply with New
21 York procedure for service of a subpoena out of
22 state.

23 A. I will tell you that it did not effectuate
24 a -- what's the word I'm looking for. It did not
25 effectuate an enforceable subpoena.

1 J. NIERMAN

2 Q. So what was the purpose then?

3 A. The purpose was just to get an answer -- to
4 get information that Recovery of Judgment was
5 entitled to have.

6 Q. If you weren't intending to effectuate
7 service, were you just trying to trick him?

8 A. I wouldn't say trying to trick him. I would
9 tell you that we're entitled to that information and
10 that's information Recovery of Judgment -- every
11 question in that subpoena we're getting closer to the
12 questions, and the questions are pretty
13 self-explanatory. I don't know if you need me to
14 read them to you. The question is seeking out
15 information which would assist Recovery of Judgment
16 in executing a judgment that had been assigned to
17 Recovery of Judgment.

18 Q. Okay. Let's go back to Exhibit 3 then for a
19 second because I want to make sure we get this clear.
20 Let's get a little foundation for this letter so that
21 we know exactly what we're talking about.

22 You recognize this letter, Exhibit 3?

23 A. I recognize it as something that was
24 produced by the plaintiff in this response to
25 discovery.

J. NIERMAN

Q. Let's not use plaintiff or defendant because we have two cases here. So produced by whom?

A. Produced by Mr. Levy pursuant to discovery.

Q. Have you seen this letter before?

A. I don't remember seeing it before. If you're asking before this litigation, I don't remember seeing it before this litigation.

Q. Does this appear to be your letterhead?

A. Yes.

Q. Do you have any reason to doubt that it's your letterhead?

A. Oh, I would say that this certainly came -- this almost certainly. I would be surprised that this did not Recovery of Judgment.

Q. Well, it says Law Offices of J. Henry Nierman so who did it come from? Recovery of Judgment or did it come from you?

A. That's more of a legal question. Technically, it's -- I guess you would say my law office operating on behalf of Recovery of Judgment.

Q. So you're a lawyer representing a client; is that right?

A. That's a fair assessment.

Q. Okay. You're the client's agent; is that

1 J. NIERMAN

2 right?

3 A. The client being Recovery of Judgment?

4 Q. Right.

5 A. Yes.

6 Q. Okay. And it's law -- it says right here,
7 Law Offices of J. Henry Nierman, and then bottom
8 there it's got J. Nierman, Joseph Nierman, legal
9 counsel, right?

10 A. Right.

11 Q. And that's a stamp of your signature, right?

12 A. Right.

13 Q. Okay. So is the fact that this is a cover
14 letter that accompanied the mailing of Exhibit 2, the
15 subpoena to Mr. Levy?

16 A. That seems very likely.

17 Q. Can you read the second paragraph of
18 Exhibit 3?

19 A. Yes. Please take notice, that failure to
20 comply with a properly issued subpoena entitles the
21 creditor to move the court to impose sanctions on the
22 debtor and request additional fines and/or
23 imprisonment.

24 Q. Was this letter mailed knowing that it was
25 not a properly issued subpoena?

1 J. NIERMAN

2 A. I don't know. The letter -- I'm going to
3 ask you to rephrase question because I don't think
4 that was a conscionable question.

5 Q. This is a cover letter that comes with a
6 subpoena. You testified a minute ago that this
7 subpoena was not properly effectuated. I asked you
8 what the intent was of the letter. What the intent
9 was of the subpoena. You said to get information; is
10 that right? Is that fair?

11 A. Yes.

12 Q. Okay. The information you claim Recovery of
13 Judgment was entitled to; is that fair?

14 A. Yes.

15 Q. So I'm asking what the intent was of that
16 second paragraph then?

17 A. I think the intent is to clarify the legal
18 position here which is if this is a properly issued
19 subpoena, in that case then that would entitle the
20 creditors to move the court to impose sanctions
21 and/or request additional funds and/or imprisonment.

22 Q. And was this letter and the subpoena sent
23 knowing that the subpoena was not a properly issued
24 subpoena?

25 A. Whose knowledge?

1 J. NIERMAN

2 Q. Yours.

3 A. I didn't send this letter.

4 Q. Who sent it?

5 A. I would assume that it was Vera.

6 Q. That's your signature on it sir, isn't it?

7 A. Yes.

8 Q. And that's your signature on the subpoena
9 that accompanied it, right?

10 A. That's correct.

11 Q. You didn't review any of this before it
12 sent; is that right?

13 A. I'm asking you this: Is there something --
14 is there information here that's inaccurate?

15 Q. Well, you tell me. It's your letter. It's
16 your subpoena.

17 A. I'll tell you, the way you worded the
18 question was what's the intent of the letter, and the
19 letter itself does not have intent. It's the sender
20 who can have intent behind the letter. So the way
21 you worded the question is something that was
22 somewhat --

23 Q. Mr. Nierman, you're not going to dance
24 around answering this, okay.

25 A. No, but here's the question --

1 J. NIERMAN

2 Q. No, no, no. It's a very simple question.

3 THE COURT REPORTER: One at a time.

4 MR. NAHOUM: Sorry.

5 BY MR. NAHOUM

6 Q. You sent a subpoena to a gentleman out of
7 state threatening fine and imprisonment if it was
8 complied with; is that right?

9 A. No, that's not true.

10 Q. Okay?

11 A. I just read to you what it said. What it
12 says is, failure comply with a properly issued
13 subpoena entitles the creditor to move the court to
14 impose sanctions on the debtor and request additional
15 funds and/or imprisonment.

16 Q. Was your intent to leave the reader of this
17 letter believing that they had a legal obligation to
18 answer the subpoena?

19 A. And what I said to you is I didn't send this
20 letter. My signature is on it. Did I give authority
21 to Vera to put my signature on it? Yes. I gave her
22 authority to stamp forms that I created. So what I'm
23 saying to is you're asking me what was my intent when
24 this letter was sent. I'm telling you I don't even
25 remember this letter being sent. I don't know that I

1 J. NIERMAN

2 ever saw it. I doubt I did it. It seems very
3 unlikely. So you're asking me what was your intent,
4 and I'm telling you how can I have intent about
5 something, an event, that I do not know about? So
6 that's not me dancing. That's me being realistic.
7 You're asking me a question about what my intent was
8 and I'm telling you I couldn't have any intent
9 because I didn't send the letter. So then you asked
10 me who did send the letter. I said Vera. You said
11 was your signature there. I said okay, yes. It is
12 my signature there because I did authorize her to
13 send out letters with my signature on it and that's
14 what happened here presumably because everything
15 leads to the conclusion that this was drafted by ROJ
16 using letter that I also authorized her to use.
17 She's not committing fraud in that perspective. She
18 was not doing -- she was not stealing the use of my
19 name. I gave authority for her using my name. What
20 I'm saying to you is when you ask me what my intent
21 was, I'm telling you is I did not have intent because
22 I was not involved in the creation of this document.

23 Q. Okay. Thank you. Let's go through it --
24 we'll go through it three times so we make sure each
25 witness gets their answer, okay. You already

1 J. NIERMAN

2 answered what the intent was of Mr. Nierman the
3 attorney.

4 What was the intent of the Law Offices of
5 J. Henry Nierman whose name appears on the top of
6 this letterhead when it sent this letter and the
7 subpoena?

8 A. And I'm saying to you that the Law Offices
9 of J. Henry Nierman is Joseph Nierman. The same
10 answer as the first answer.

11 Q. So let me ask again this: You're here as a
12 30(b)(6) witness for Recovery of Judgment. What was
13 the intent of Recovery of Judgment LLC when it mailed
14 Exhibit 3 and Exhibit 2 to Mr. Levy?

15 A. That is an excellent question, and what I'm
16 telling is the intent here was clearly to get him to
17 answer these questions.

18 Q. Was the intent to get those questions
19 without having any legal compulsion?

20 A. I would say the intent was to get those
21 questions without having the legal ability to enforce
22 compulsion -- to enforce his -- his compliance with
23 the letter. It's a letter. At the end of the day
24 it's a letter. When Mr. Schlanger would contact with
25 Mr. Levy, I'm sure the first thing he said to him was

1 J. NIERMAN

2 this is not validly served. So he knew immediately
3 before any lawsuit, before he put pen to paper,
4 before this letter -- wrote a letter on December
5 27th, they were well aware that was not threatening
6 any type of fine or imprisonment or anything of the
7 kind because they were well aware that even under the
8 terms and terminology that was written on the cover
9 letter it was evident that was saying that this
10 cannot be enforceable. You're not under the threat
11 of anything. Nothing can happen to you. If
12 Mr. Schlanger spoke to me, which presumably he did
13 based on your question before, I would have told him
14 that no, there was no intent for us to compel
15 compliance. So I think that answers all of your
16 questions.

17 Q. Mr. Nierman, are you an honest man?

18 A. I didn't thoroughly --

19 Q. It's a yes or no question. Are you an
20 honest man?

21 A. Yes.

22 Q. On a scale of one to ten how would you rate
23 your level of honesty?

24 A. I always try to be honest in everything I
25 say and everything I do.

J. NIERMAN

Q. Mr. Nierman, are you an ethical man?

A. Very much so.

Q. On a scale of one to ten how would you rate your level of ethics?

A. I would rate my ethics as being a ten.

Q. Both Exhibits 3 and 2 have what appear to be watermarks on every page that say "final notice"; is that right? Is that fair?

A. It seems to be, yes.

Q. You approved these forms, yes?

A. Yes.

Q. Why do they say "final notice"?

A. That was probably a strategic thing that Shawn and I -- I don't remember how we came up with putting final notice on a subpoena or anything like that. I don't remember any conversation about that. So I don't know -- I don't know why it would say final notice.

Q. In 2016, was it your customary and regular practice to put the watermark final notice on letters enclosing subpoenas and on subpoenas?

A. Probably.

Q. Was it your customary and regular practice to put those watermarks on letters and subpoenas

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2 being sent to out-of-state debtors?

3 A. I don't know that such a thing ever happened
4 before. You're asking about custom and practice,
5 what I'm saying to is that as a general rule we did
6 not take cases where the debtor was out of state.
7 This did not happen. Yeah, this happened. This case
8 was taken in before I was involved. As a general
9 rule, someone calls me up and they say that the
10 debtor is out of state and the judgment is out of
11 state, we farm it out. We don't even have any these.

12 Q. But you didn't farm out this one. This one
13 you sent the subpoena; is that right?

14 A. So it certainly seems. The only -- I mean,
15 the reason I'm confirming -- the extent I'm agreeing
16 is that this looks like something that my office
17 produced. So I do not deny that. I do not recall
18 sending this letter, this subpoena or anything
19 associated with this, but I don't -- I'm saying to
20 you I did not do it. Vera would have done it. If
21 Vera had done it, I would not be surprised because
22 this looks like something the type of thing that we
23 generate. So --

24 Q. I'm sorry. Go ahead.

25 A. So that is how much information I have about

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2 this. I would be astonished if Vera remembered
3 anything about this because she sent out a lot of
4 letters.

5 Q. Okay. Let's be very clear about something,
6 in December of 2016, J. Henry Nierman was the
7 attorney of Recovery of Judgment LLC in the matter of
8 Matt Morrison against Shaul Levy; is that right?

9 A. Yes.

10 THE COURT REPORTER: Mr. Nierman, I
11 need you to slow down a little bit for me,
12 please.

13 MR. NIERMAN: I apologize for causing
14 any difficulties for you.

15 BY MR. NAHOUM:

16 Q. These watermarks that say final notice, if
17 the subpoena was not properly served it couldn't have
18 been a final notice, could it have?

19 A. I don't really understand that question.

20 Q. Well, it says final notice. What does final
21 mean?

22 A. I think the words "final notice" are very --
23 are self-explanatory.

24 Q. You're muted. Stop. Stop. You're muted.

25 THE COURT REPORTER: I don't hear

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anything.

BY MR. NAHOUM:

Q. Are you there?

A. I think so. Sometimes if I get a call it sort of disconnects me.

Q. I get you. Do you want to take a five-minute break?

A. I don't need a break if it's not going to take much longer. I don't know if the court reporter needs a break. I'm usually more concerned for them because they work harder than either of us do, especially apparently with me as a deponent, it's particularly strenuous on the court reporter.

MR. NAHOUM: Let's take five minutes.

(Whereupon a break was taken at

2:06 p.m.)

MR. NAHOUM: Back on the record.

BY MR. NAHOUM:

Q. Mr. Nierman, turning your attention back to Exhibit 2, the subpoena duces tecum. Can you tell me for what date the subpoena was made returnable?

A. December 26th, 2016.

Q. And who selected this date?

A. I assume that Vera did.

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2 Q. I'm sorry?

3 A. I assume that Vera did.

4 Q. Why do you assume that?

5 A. I assume she generated this document.

6 Q. When you schedule return dates for
7 subpoenas, what's the process for selecting dates?

8 A. The minimum time requirement as to how many
9 days in advance it has to be served. Although this
10 one is not serving a subpoena as we described
11 earlier. This is a letter.

12 Q. I'm referring to Exhibit 2, the subpoena
13 duces tecum.

14 A. I understand it's a letter that looks like a
15 subpoena. What I'm saying is this not a subpoena.

16 Q. Let's be clear what you're talking about.
17 Are you talking about Exhibit 2 or Exhibit 3 because
18 I have a letter as Exhibit 3, and I have a subpoena
19 and that's Exhibit 2?

20 A. Oh, I understand the letter claims that it's
21 a subpoena. I understand that the document looks
22 like a subpoena. I'm telling you now that I don't
23 think it's a subpoena.

24 Q. What do you think it is?

25 A. I think it's an attempt to get him to answer

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questions.

Q. I'm reading this -- okay. Let's get this straight here because I'm looking at the caption on the top of Exhibit 2. It says subpoena duces tecum. Am I reading that wrong?

A. No, you're not reading that wrong. I'm telling you that I understand that it looks like a subpoena. What I'm also telling is that it's not an enforceable subpoena. When I hear the term subpoena I think it's something that is enforceable where someone failed to comply with the subpoena that there are consequences. This does not meet that definition. There were no consequences for his failure to respond to it.

Q. So it purports to be a subpoena, but it's not one. Is that what you're saying?

A. What I'm saying is this looks like a subpoena. It is not a subpoena.

Q. What is it?

A. I'm saying it's a letter.

Q. But it says subpoena duces tecum, does it not?

A. It does.

Q. Okay. And on the caption it says the

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2 People of the City of New York; is that right?

3 A. Yes.

4 Q. Okay. And this is not just a subpoena for
5 information of documents. It's a subpoena directing
6 the recipient to appear at your office and give live
7 testimony; is that right?

8 A. That's what it indicates.

9 Q. You didn't hear my question. Do you --

10 A. I don't think that you are -- I don't think
11 that either of us disagree that this was
12 unenforceable.

13 Do you think it was enforceable?

14 Q. So going back to my question, when you
15 schedule the return date for subpoenas how is the
16 date selected?

17 A. I did not schedule the subpoena.

18 Q. Who did?

19 A. I speculated, and frankly I probably should
20 not have speculated because I'm not answering with
21 information. I'm telling you if I had to guess, I
22 would guess Vera.

23 Q. In December of 2016, of all the people
24 capable of generating this document, selecting that
25 date, who among those people?

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2 A. I would have been if I had been consulted
3 about particular thing. Shawn would have been. It's
4 unlike he would have been consulted because it's not the
5 sort of thing that he did. Vera. Those are the
6 three people who would have come up with a date. No
7 intern would have been authorized to select a date.

8 Q. When the Law Offices of J. Henry Nierman
9 selects a return date for testimony or subpoenas, how
10 are those dates selected?

11 A. I'm not -- I just want to make sure I
12 understand the question. Because you're asking the
13 question now to Law Offices of J. Henry Nierman?

14 Q. The Law Offices of J. Henry Nierman or you
15 Henry Nierman attorney at law as we've talked about
16 in the same suit, yes?

17 A. Yes.

18 Q. Okay. So how do you select return dates for
19 subpoenas?

20 A. I normally would pick something that would
21 be 20 to 30 days out.

22 Q. Did you do that here?

23 A. I wasn't involved in this.

24 Q. But your signature is on here, is it not?

25 A. Yes.

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Q. December 26th, is that the day after Christmas; is that right?

A. I believe -- most years.

Q. Is there a year when it's not?

A. Not to my knowledge.

Q. And are you aware that December 26th, 2016, was a Monday?

A. Okay. That's your testimony. I'm not aware of that.

Q. Do you have any reason to disbelieve that?

A. No. I just haven't looked at a calendar.

Q. Fair enough. Are you aware that in observance of Christmas Day, the New York State courts were closed on December 26th, 2016?

A. I don't know.

Q. You're not aware of it?

A. No, I'm not aware. I don't know that December 26th -- I know that December 26th in a normal is not a legal holiday. Now you're telling me that the regularly scheduled holiday of Christmas because it fell on a Sunday in 2016 was treated as Christmas for legal holiday purposes, I don't know that's true or false.

Q. Do you have any reason to doubt that the New

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2 York State courts were closed on December 26th, 2016?

3 A. Yes. I have every reason to doubt it
4 because in most years that would not be the case.
5 Most years they refer to that as boxing day.

6 Q. If I told you --

7 A. It's not a legal holiday.

8 Q. If I told you that I looked at the calendar
9 and December 26th, 2016, the courts were closed in
10 observance of the Christmas Day would you think I was
11 a liar?

12 A. I would think that you should be put on the
13 stand, and you sound like you'd probably be an
14 excellent witness for the plaintiff.

15 Q. What --

16 A. I don't know if this is something that's
17 true or not true.

18 Q. What is the process your law -- what is the
19 process you as a lawyer or your law office uses for
20 ensuring that the return date of subpoenas are not
21 selected on dates in which the courts are closed?

22 A. You look at a calendar.

23 Q. Did you do that here?

24 A. I didn't generate this letter, so I did not
25 do that here. But I have made it clear to Vera that

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2 in no circumstances can she schedule a subpoena for a
3 legal holiday, if that's your question.

4 Q. When did you do that?

5 A. Before she started working.

6 Q. Is that part of training?

7 A. Correct.

8 Q. And is that element of her training stated
9 in the document?

10 A. I haven't looked at that document in a long
11 time so I don't know.

12 Q. Is there a written policy for Recovery of
13 Judgment LLC on when to select subpoena return dates?

14 A. Vera's training, let's be clear, is very
15 difficulty training that happened with interns. I
16 want to be crystal clear about this because I don't
17 know if you covered this. I want to be clear about
18 this. Vera's training was far more extensive than
19 what anyone else got. She was the office manager.
20 We had to know that she was going to be able to
21 handle the day-to-day activities in a way that was
22 not going to subject us to lawsuits, specifically at
23 the FDCPA violations. So that being the case, I
24 spent a great deal of time with her educating her
25 about the law and what she must do and what she must

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not ever do and where -- and where her responsibilities lay. Included in that was an explanation that under no circumstances can we ever a schedule a return date of anything on a legal holiday.

Was that something that I wrote down, probably not because her training that I gave her was far more extensive than anything that I would have put into a manual. I'm talking about hundreds of hours of training, which is ongoing even afterwards. We've had to update her on different legal matters. So her training was far more extensive because her responsibilities were far more extensive.

I personally invested a great deal of time in teaching her what she should do, as did Shawn. As I said, Shawn understood a great deal about the law.

Q. And yet despite all of that training and all of that time you spent with her, that training failed in this case; isn't that right?

A. That's your conclusion. Well, what I'm saying to you is this: Would I have sent out this letter to look this way? Am I happy this letter went out this way? No. I'm not happy this letter went out this way.

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2 Q. So if you had -- is it a fair statement if
3 you had reviewed this letter, and if you had reviewed
4 the subpoena before it was sent out, you would have
5 stopped it? Is that a fair statement?

6 MR. NIERMAN: I'm going to object
7 because that calls for speculation.

8 BY MR. NAHOUM:

9 Q. Okay. Go ahead and answer the question,
10 please.

11 A. No. I'm not going to speculate.

12 Q. Well, you can.

13 A. I can and I choose not to.

14 Q. Did there ever come a time where you were
15 presented with a judgment enforcement device bearing
16 your signature that you stopped from being
17 transmitted because it was out of compliance?

18 A. I assume so, but I can't think of any
19 examples offhand. Although I don't know if it would
20 have gotten to the stage of actually being generated.
21 Normally questions -- normally situations like that,
22 the document never actually would have been prepared.
23 It would be something that we, like, questioned. It
24 would be asking and it would be no, no, you cannot do
25 that. So to give a full answer to your question, it

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2 probably never happened because I don't think
3 documents like that were ever actually created.

4 Q. Were you asked whether or not it was
5 permissible to send a letter and a subpoena to an
6 out-of-state debtor for testimony and the production
7 of documents?

8 A. In this particular case?

9 Q. No, generally.

10 A. I don't recall that conversation. It's the
11 sort of thing I would taught her.

12 Q. Were you asked in this particular case
13 whether or not it was appropriate to send a subpoena
14 to an out-of-state debtor?

15 A. Certainly I don't recollect that at al.

16 Q. Were you ever asked whether or not it's
17 appropriate to schedule a deposition for December 26,
18 2016?

19 A. No.

20 Q. Have you ever --

21 A. I just want to clarify also that, as I said,
22 this sort of thing -- situation of having an
23 out-of-state debtor is highly unusual. So it's not
24 some sort of thing that came up very often. You're
25 asking me if I taught her that. As I said, cases

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2 that came in which involved out-of-state debtors, we
3 punted regularly. And I told her, don't take cases
4 like that. And we actually had some with respect to
5 Jersey cases that I would just farm out -- that I
6 would try to farm out to someone from New Jersey. We
7 punted our cases like this left and right. We had a
8 lot of cases and we rejected a lot of cases because
9 cases had to meet certain specifications. They had
10 to prove that they had a valid judgment and that that
11 valid judgment was in New York and the debtor was in
12 New York, and we had a lot of circumstances where we
13 were very meticulous to make sure we're only dealing
14 with New York people. So when you ask me if I taught
15 her about out-of-state debtors and sending a letter
16 via subpoena duces tecum, I don't know that I
17 actually do have to cover that because we didn't have
18 clients like this. We didn't have --

19 Q. Okay. So because you punted, to use your
20 word, on the out-of-state judgments, you didn't have
21 any policies or procedures on how to collect on those
22 judgments; is that right?

23 A. What I'm saying is I don't remember it being
24 anything that I focused on very much at all. I would
25 have told her that the reason we don't take these

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2 debtors because it's all sorts of different
3 regulations that apply.

4 Q. So you did not have policies on how to send
5 subpoenas to out-of-state debtors; is that right?

6 A. That's wrong. The policy was don't take
7 these cases.

8 Q. But you did take this case.

9 A. That's the policy.

10 Q. Okay. But you did take this case, so you
11 didn't have a policy or procedure on how to collect
12 on this judgment because it was out of state; is that
13 right?

14 A. No, that's not right because I explained to
15 you earlier this came to us before I was involved.

16 Q. Mr. Nierman --

17 A. I'll make it clear. You want your
18 admission. This is your admission, okay. Here's
19 your admission. I'll talk slowly so make sure that
20 the court reporter does not struggle to take down any
21 words I'm about to say. My admission to you is that
22 this debtor was out of state. This debtor was a case
23 that came in before I was involved. My understanding
24 was we had no cases that were out of state. I missed
25 this one. So the rules which governed our policies

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2 were all designed to apply to cases where we're
3 dealing with an out of state -- with an in-state
4 debtor. Those are rules are not appropriate for an
5 out-of-state debtor. I was unaware of this case. So
6 the rules that we followed were not geared for a
7 Shaul Levy type of situation, and that is how you and
8 I find ourselves in a deposition today.

9 Q. So if you had read this letter bearing your
10 signature and that subpoena bearing your signature
11 before they were sent out, you would have stopped it,
12 right?

13 MR. NIERMAN: I'm going to object that
14 that's asked and answered.

15 THE WITNESS: I'm not going to
16 speculate. I don't know what I would have
17 done with this letter if I had seen it. I
18 don't know. I do know that everything is
19 designed to make sure we were a hundred
20 percent complying with every regulation
21 under the FDCPA.

22 BY MR. NAHOUM:

23 Q. I'm going to ask you now to take a look at
24 what pre-marked as Exhibit 4.

25 A. Okay.

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Q. You got that there? For the purposes of making sure that you and I are on the same page and what document we're looking at, this is an answer filed for Law Offices of J. Henry Nierman and Recovery of Judgment.

Do you see the one?

A. I see it. Do you want me to hold it up for you.

Q. Yes. I want you to hold that up.

A. Good?

Q. Yes. Okay.

Can you explain what this document is?

A. It looks like an answer to the complaint.

Q. Have you seen it before?

A. Yes.

Q. When?

A. Probably before it was filed.

Q. When you say answer to the complaint, can you give me more on that? Answer to what complaint?

A. The complaint in this action.

Q. And who is answering the complaint?

A. Barry Schneps on behalf of the corporate defendants.

Q. You have testified repeatedly today that Law

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2 Offices of J. Henry Nierman and J. Henry Nierman are
3 the same, yes?

4 A. Yes.

5 Q. Okay. Why then is there a separate answer
6 for the Law Offices of J. Henry Nierman?

7 A. I will admit that when this case came in
8 because of the circumstances with Law Offices of
9 J. Henry Nierman, I was very confused as to under the
10 law whether or not I was permitted -- because it was
11 being identified as a corporate defendant and because
12 I'm not admitted in federal court, I was confused as
13 to whether or not I was permitted to represent an
14 entity that's been designated as Law Offices of
15 J. Henry Nierman. Seeing as I needed Mr. Schneps to
16 represent Recovery of Judgment in its corporate
17 capacity, it just seemed to make the most sense to
18 have him represent both named corporate defendants
19 even though Law Offices of J. Henry Nierman is not a
20 valid corporation of any kind. It just seemed that
21 the most sufficient way to do what needs to be done
22 without having to requiring any further explanation.

23 Q. Please turn your attention on page 2 to
24 paragraph 5?

25 A. Five? I don't have.

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2 Q. Under the heading first affirmative defense?

3 A. Uh-huh.

4 Q. It says the underlying judgment is a valid
5 judgment entered in New York City Housing Court; is
6 that right?

7 A. That's correct.

8 Q. How do you know that the underlying judgment
9 was valid?

10 A. It says produced by WAK Enterprises.

11 Q. I'm asking you how you knew that the
12 underlying judgment was valid?

13 A. Because I saw the document that -- I saw a
14 copy of the judgment.

15 Q. Okay.

16 A. I'm confused.

17 Q. That's your answer. You saw a copy of the
18 judgment; is that right?

19 A. Yes.

20 Q. And besides looking at the copy of the
21 judgment, did you do anything else to verify that it
22 was a correct document?

23 A. Not to my recollection.

24 Q. Did you do anything to verify that the
25 judgment had not yet been satisfied?

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A. There was no satisfaction that it had been entered.

Q. Entered where?

A. With the court.

Q. Did you search the court docket?

A. I don't recall doing that search.

Is that your claim? Is that Mr. Levy --

Q. I'm asking you a question.

A. Okay.

Q. Was it your customary and regular practice to search or not search court dockets to see if judgments had been satisfied?

A. As a general rule, yes.

Q. You didn't do it in this case?

A. Again, this case came in before I was involved.

Q. Okay. Before you became involved -- let's clarify what you mean when you say involved. When you say "involved" you mean representing Recovery of Judgment in the matter of Matt Morrison against Shaul Levy, right?

A. Can you please repeat the question? I'm sure I understand that.

Q. You keep talking about -- you keep using the

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2 term "involved." When your involvement as a
3 demarcation point chronologically, right? I want to
4 know what we mean by "involved." Let's define
5 involved.

6 A. Involved means --

7 Q. I'm interpreting -- let me finish.

8 I'm interpreting "involve" to mean you as an
9 attorney representing Recovery of Judgment LLC in the
10 matter of Matt Morrison against Shaul Levy; is that
11 right?

12 A. No. When I've been saying involved here,
13 I've been saying my involvement with Recovery of
14 Judgment.

15 Q. Okay. I want to make sure that we're just
16 clear what our definitions are.

17 A. Okay.

18 Q. Fair enough.

19 And you testified now that you did not
20 search the court docket to determine whether or not
21 this judgment was a valid judgment?

22 A. I had a copy of the judgment.

23 Q. Right.

24 A. Okay.

25 Q. And you didn't check to see whether or not

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2 the judgment was satisfied or not satisfied?

3 A. I do not recall doing that search for this
4 particular case.

5 Q. Okay. Now, my question was, was it your
6 customary and regular practice to check dockets
7 before you began collecting on cases in your role as
8 an attorney?

9 A. Yes.

10 Q. Did you check dockets to see whether or not
11 they were satisfied or not?

12 A. Yes.

13 Q. Is there a reason you didn't do that here?

14 A. I didn't say I didn't do it here. I said I
15 don't recall doing it here.

16 Q. Is there a reason you wouldn't have done it
17 here?

18 A. Well, if it's an old docket sometimes, if
19 it's a very old case, in that case sometimes it takes
20 a long time whether -- and as I said, this case came
21 in before I came in. So I don't know that I went
22 through every case that we had on file to see was
23 this judgment executed or not. I don't know that I
24 did that.

25 Q. Can you turn your attention to Exhibit 4 to

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2 paragraph 15 on page 3. It says some are all of the
3 defendants do not qualify as debt collectors; is that
4 right?

5 A. Yes.

6 Q. Can you please describe what that means?

7 A. That means I don't know that I qualify under
8 the law as a debt collector.

9 Q. Why not?

10 A. Well, the term -- it's a term of art, debt
11 collector, so depending on the amount of my time that
12 I invested in doing debt collection and the amount of
13 efforts that someone has to take in order to classify
14 or qualify as a debt collector, so I'm not sure that
15 under the law that I meet those specifications. So
16 when I'm filing an answer as a potential defense,
17 that's something I'm going to establish of the
18 plaintiff. I'm going to force the plaintiff to
19 establish as being valid.

20 Q. The term debt collector, it's not a term of
21 art. It's a legal term, right? And --

22 A. You're correct. It's a legal term, not a
23 term of art, yes.

24 Q. And it means any person who uses any
25 instrumentality of interstate commerce or the mails,

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2 in any business, the principle purposes of which is a
3 collection of debts.

4 Do you not meet that definition?

5 A. I don't know that as an attorney I meet that
6 definition. I don't know the standards for attorney
7 qualifies as a debt collector. It's not the same as
8 Recovery of Judgment whose principle function is to
9 do debt collection.

10 Q. What is it?

11 A. There's certain standards. If someone is
12 a -- from the family law and someone comes up to him
13 and says, hey, can you help me collect a debt and
14 they work on that debt, they don't instantly qualify
15 as a debt collector under the FDCPA. I'm sure you're
16 aware of that.

17 Q. Do you practice family law?

18 A. No. I practice commercial litigation. Very
19 little of my commercial litigation involves debt
20 collection. Most of it is in defense.

21 Q. You represented Recovery of Judgment for how
22 long, sir?

23 A. Five years.

24 Q. And what's their principle business?

25 A. They do debt collection.

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2 Q. And you as their agent, did you do debt
3 collection?

4 A. When you say "as their agent," you mean as
5 their attorney or you mean as the owner of Recovery
6 of Judgment?

7 Q. As their attorney.

8 A. So I'll tell you this much. I've looked
9 through this legal issue several times during the
10 course of my involvement with Recovery of Judgment,
11 and whether I am personally qualified as a debt
12 collector or not, and I see very conflicting -- I
13 found very conflicting law or a law that, at the very
14 least to me, is conflicting as to whether or not I,
15 as an owner of a debt collection company who is also
16 serving as an attorney for that debt collection
17 agency qualifies under the law as a debt collector.

18 So when I'm drafting an answer to a
19 complaint, I'm certainly going to list that as a
20 potential affirmative defense. Does that mean that
21 under the law I am not a debt collector? No. It
22 means that I may or may not be a debt collector.
23 Assuming I'm not a debt collector, I'm not liable
24 under the FDCPA. That is why it's in the answer.

25 Q. You said some or all of the defendants do

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2 not qualify as debt collectors in -- this is your
3 sixth affirmative. Let's remember this is answer for
4 Recovery of Judgment LLC and the Law Offices of
5 J. Henry Nierman, okay. So the answers you're giving
6 responding to document Exhibit 4 in that capacity.

7 A. Uh-huh.

8 Q You said in your sixth affirmative
9 defense, some or all defendants do not qualify as
10 debt collectors.

11 Can you just explain why maybe perhaps
12 you are not a debt collector? What about Recovery
13 of Judgment LLC? Is Recovery of Judgment LLC a debt
14 collector?

15 A. I believe Recovery of Judgment LLC is a debt
16 collector.

17 Q. Please turn your attention to paragraph 17
18 on page 3 under the seventh affirmative defense,
19 paragraph 17 says, plaintiff does not qualify as a
20 consumer under the governing statutes. Explain what
21 that means.

22 A. In order to be afforded the Fair Debt
23 Collection Practices Act protection, you would have
24 to be a consumer. So I had not searched whether or
25 not this is deemed being a consumer. Is that -- this

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2 is a circumstance of him -- I assume that this --
3 this whole thing that came up pursuant to rent. I
4 don't know why he owed the money. Do you know why he
5 owed the money?

6 Q. Did you examine the underlying case?

7 A. I saw the judgment. I did not examine it.
8 I don't recall seeing the underlying case. Certainly
9 not in preparation of this answer, I didn't examine
10 this. So what I'm saying to you is, I can -- you and
11 I can speculate as to why this judgment was entered,
12 and the most likely answer is that it was rent. And
13 if it was rent and he was a consumer, then he's
14 afforded FDCPA protection. But you cannot state to
15 me with certainty, unless you know more about the
16 underlying case than I do, that he was a consumer.
17 Can you?

18 Q. I'd like you to take a look at Exhibit 5
19 that I pre-marked as Exhibit 5. Do you have that
20 there?

21 A. I'm pulling it up. What's Exhibit 5? Is
22 that my answer?

23 Q. Yes. So for purposes of just making sure
24 we're on the same page here, this is a pro se answer
25 from you. So hold that up.

1 J. NIERMAN

2 A. Yes, I have it here.

3 Q. Okay. What is this document?

4 A. This is my answer to the complaint in the
5 underlying action.

6 Q. And by "you" you mean?

7 A. Me personally prepared by me.

8 Q. Take your time. My question is did you
9 draft this pleading?

10 A. Yes.

11 Q. The signature lines says 157 Mineral Spring
12 Avenue in Passaic, New Jersey. Is that your home
13 address?

14 A. That's correct.

15 Q. Why did you not list the professional
16 address?

17 A. I was answering this pro se.

18 Q. I understand. Is there a reason why you
19 didn't include a professional address?

20 A. If I was going to get mail on it, it was
21 easier to get that mail at my home address.

22 Q. I'm going to go through some of the similar
23 questions that I just went through. I'm going do
24 this because I want to make sure that we're
25 getting -- this is one of those situations where I

1 J. NIERMAN

2 wanted to make sure we know who is giving an answer
3 here, okay.

4 So please turn your attention to paragraph 5
5 on page 2. The underlying judgment is a valid
6 judgment entered in New York City Housing Court.

7 Do you see that?

8 A. Yes.

9 Q. How do you know that?

10 A. I saw a copy of the judgment.

11 Q. Did you do anything more to verify that it
12 was a valid judgment?

13 A. Other than the -- my answer is the same as
14 before with respect to the first answer.

15 Q. Turning your attention to paragraph 15 on
16 page 3. Some or all of defendants do not qualify as
17 debt collectors?

18 A. Yes.

19 Q. Who are you talking about?

20 A. In this particular setting, I'm talking
21 about myself individually.

22 Q. Are you talking about the Law Offices of
23 J. Henry Nierman?

24 A. Technically, yes.

25 Q. And the Law Offices of J. Henry Nierman is

1 J. NIERMAN

2 not a debt collector?

3 A. Correct.

4 Q. Why is that?

5 A. The same reason I explained before.

6 Q. Turning your attention to paragraph 17 on
7 page 3. Plaintiff does not qualify as a consumer
8 under the governing statutes.

9 Can you explain that?

10 A. I think that's a very well-worded response.
11 We do not know if he's a consumer. Only consumers
12 are afforded protection under the FDCPA. Until the
13 Plaintiff can establish that he's a consumer, the
14 FDCPA is inapplicable to him.

15 Q. Turning your attention to paragraph 19 on
16 page 3. If you go under the eighth affirmative
17 defense. It says, defendants take careful steps to
18 operate and comply with the FDCPA and all governing
19 statutes. The subject letter/subpoena was an
20 isolated incident; is that right?

21 A. Yes.

22 Q. Is issuing the letter of subpoena, so that's
23 Exhibits 2 and 3, can you please describe each and
24 every careful step Recovery of Judgment LLC took to
25 comply with the Fair Debt Collection Practices Act?

1 J. NIERMAN

2 A. Well, I think that's a misreading of what's
3 written in the answer. The answer is talking about
4 the general policies and steps of the -- of Recovery
5 of Judgment as defendants. So you're saying please
6 clarify what steps they took with respect to this
7 particular instance and that's not -- this is
8 something in our general policies.

9 Q. I'm reading your words, sir. Defendants
10 take careful steps to operate and comply with FDCPA
11 and all governing statutes. The subject
12 letter/subpoena was an isolated incident?

13 A. Exactly. It's an outlier. It's not a
14 reflection of the general policies that were employed
15 by Recovery of Judgment.

16 Q. I'm asking you which -- what are each and
17 every careful step that Recovery of Judgment LLC took
18 to comply with the Fair Debt Collection Practices Act
19 when it sent Exhibits 2 and 3?

20 A. I cannot properly answer that question
21 because there are too many things that fit that
22 answer.

23 Q. Give me the top ten?

24 A. Okay. The fact that on the letter there's
25 no stamp, there's no signature. There's nothing

1 J. NIERMAN

2 indicating that it's coming from a debt collection
3 agency. The fact that there's no cursing in this
4 letter. The fact there are countless elements of the
5 FDCPA which are reflected with respect to what is put
6 into any letter that came out of Recovery of
7 Judgment.

8 So all these things that you would not --
9 that you haven't raised in your complaints are
10 reflection of steps that were taken by ROJ to ensure
11 complicity -- I don't like the word complicity --
12 compliance -- compliance with the FDCPA.

13 Q. The FDCPA generally prohibits the use of
14 false, deceptive, misleading, harassing debt
15 collection practices.

16 Do you agree with that?

17 A. Are you quoting a particular section of the
18 FDCPA?

19 Q. I'm just asking if you agree with that
20 statement.

21 A. Probably.

22 Q. Yes or no?

23 A. If you want to quote to me a section of the
24 FDCPA, I can tell you yes or no.

25 Q. Does the FDCPA prohibit the use of false

1 J. NIERMAN

2 debt collection practices?

3 A. False debt collection practices? I don't
4 know what you mean by "false." You can't say
5 something untrue in a letter that you're sending
6 through the mail because of the FDCPA. Does that
7 answer your question?

8 Q. That's a fine definition.

9 A. Okay. I believe that's true.

10 Q. Do you believe it's also true if something
11 is misleading?

12 A. I don't know. I mean, it probably depends
13 on what misleading means. I'm not sure what
14 misleading means. I don't think this letter is
15 misleading. That's where you and I disagree. You're
16 saying because it says subpoena -- you know, I'm
17 going to break this down on the record here. So
18 you're saying because it says subpoena, and even
19 though it has a qualifier that's saying that there's
20 nothing here that affects anything if it's not
21 validly served and somehow this is deemed misleading.
22 I don't think that's true. My take on the FDCPA is
23 you're wrong. You're mistaken.

24 Q. Sir, I'm not saying anything. I'm asking
25 you questions. You're the one doing all the saying

J. NIERMAN

here?

A. Okay. So you're asking me -- you're asking me am I allowed to say something that's misleading, so I say to you is if that's what's written in the FDCPA then I certainly wouldn't argue with that.

Q. You stated here in your eighth affirmative defense that defendants take careful steps to operate and comply with the FDCPA and all governing statutes. The subject letter/subpoena was an isolated incident.

A. Right.

Q. Right.

A. Correct.

Q. And I'm asking you what steps you took to make sure that the subject letter and subpoena weren't misleading?

A. I started giving you a list of different things. Do you want me to continue giving you a list of other FDCPA violations that are not found in this letter?

Q. How about misleading --

A. Because it sounds like you're testing my knowledge of the FDCPA as to esoteric things that are unrelated to this complaint. So that's why I don't understand the question.

1 J. NIERMAN

2 Q. I'm not testing your knowledge. I'm reading
3 your defense from your answer.

4 A. And my point is this. The point of this
5 answer, and if you want me to clarify what this
6 answer is saying, it's saying under the general
7 policy Recovery of Judgment and all the defendants
8 took many steps to ensure that something like this
9 would never, ever happen. This is not a reflection
10 of a poor method of operation by Recovery of Judgment
11 or the defendants. We take many steps. This was an
12 outlier in that there are elements in here that do
13 not comport with our normal standard as to how we
14 operate. When I'm saying that --

15 Q. I want to bring your attention to
16 paragraph 21 under the ninth affirmative defense. It
17 says the subject letter/subpoena resulted from
18 excusable lawyer error.

19 Can you please describe what that excusable
20 lawyer error was?

21 A. That was intended to say that to the extent
22 there's anything about this letter that is not
23 compliant with the FDCPA that was lawyer error.

24 Q. What is the lawyer I error? You're the
25 lawyer. It's your error. What was your error?

1 J. NIERMAN

2 A. What I'm saying is, assuming that anything
3 that is wrong with this letter that was an error. So
4 I'm not going to draw for you a legal conclusion here
5 as to what is or what isn't potentially illegal about
6 this letter when I don't know if there's anything
7 illegal about it. But assuming arguennendo [sic]
8 that there is something illegal about this letter,
9 that was my lawyer error. I don't know that there
10 was anything, but assuming if you can prove -- if you
11 can --

12 Q. So is it your take then that it doesn't
13 matter what was wrong with the letter, if it was
14 wrong, it was an error?

15 A. With the allegations you raised? Yes. And
16 if there was something wrong here, yes, that was an
17 error.

18 Q. It doesn't matter what was wrong. If it was
19 something wrong, it was an error? Is that your
20 testimony?

21 A. I don't really understand that question.

22 Q. You just explained what you meant that if
23 there was anything wrong here, it was because it was
24 an error. Yes?

25 A. In other words, under the law there is

1 J. NIERMAN

2 something -- you raised allegations that there are
3 errors in -- there are things that are FD CPA
4 violations. To the extent that you are correct, then
5 that was a lawyer error. Yes.

6 Q. Okay. What was the error? What was the
7 error that you made?

8 A. Did I just not answer that question?

9 Q. No.

10 A. I don't think there are any errors. I think
11 there's nothing wrong with this letter. It does not
12 mean that ultimately my perspective as to whether or
13 not there was anything wrong with this letter are
14 going to be validated by a court. Assuming a court were
15 to agree with any of your allegations, then that was
16 a result of my error. I am not going to sit here and
17 say, oh, you're correct this was illegal when I don't
18 think it was illegal.

19 Q. Was it an error to mail a subpoena on your
20 judgment to an out-of-state debtor?

21 A. I already said I don't think this is a
22 subpoena.

23 Q. Was it an error to mail a letter to an
24 out-of-state debtor on a New York judgment telling
25 that person that if they didn't answer the subpoena

1 J. NIERMAN

2 they'd be subject to additional fines and/or
3 imprisonment.

4 A. That's not what that letter says. The
5 letter says assuming it's properly served.

6 Q. Was the subpoena and the cover letter
7 intentionally mailed to Mr. Levy?

8 A. I do not know. I did not mail it.

9 Q. You're answering on behalf of who at this
10 moment?

11 A. I'm answering on behalf of myself.

12 Q. Okay. I'm going to ask you a question as a
13 witness for Recovery of Judgment LLC.

14 A. Okay.

15 Q. Was the subpoena and cover letter
16 intentionally sent to Mr. Levy?

17 A. I have no recollection.

18 Q. Was the subpoena and cover letter
19 intentionally mailed to Florida?

20 A. I have no recollection.

21 Q. Was December 26th, 2016, intentionally
22 selected as a return date for the subpoena?

23 A. I have no recollection.

24 Q. What is an excusable attorney error for a
25 document that an attorney signs but did not review

1 J. NIERMAN

2 before it was mailed?

3 MR. NIERMAN: I'm going to object that
4 it calls for a legal conclusion.

5 THE WITNESS: I have not researched
6 that.

7 BY MR. NAHOUM:

8 Q. What, if any, procedures were in place at
9 Recovery of Judgment LLC to avoid mailing New York
10 State subpoenas to out-of-state deponents?

11 MR. NIERMAN: Objection; asked and
12 answered. Now we're just going over the
13 same thing over and over.

14 BY MR. NAHOUM:

15 Q. How, if at all, were those procedures
16 followed here?

17 A. After all of what?

18 Q. You just said it was asked and answered. So
19 you've already told me what your procedures were.

20 How --

21 A. I'm not sure I understand the question. I'm
22 just trying to clarify the question.

23 Q. I'm asking you about mailing subpoenas to
24 out-of-state deponents. Mailing letters indicating
25 they're enclosing subpoenas to out-of-state

1 J. NIERMAN

2 deponents. What procedures were in place to prevent
3 from that happening, and how were those procedures
4 followed?

5 A. And what I'm answering to you is that we
6 were not outfitted to take care of out-of-state
7 debtors. That's what I answered previously.

8 Q. So whatever procedure you had --

9 A. Our procedures were designed for in-state
10 debtors. I was unaware that we had an out-of-state
11 debtor.

12 Q. So your procedures failed to prevent this
13 letter, Exhibit 3, and the subpoena from being
14 mailed; is that right?

15 A. Because -- out of the hundreds of cases that
16 we have I was unaware we had this out-of-state
17 debtor.

18 Q. So your procedure failed; is that right?

19 A. No. What I'm saying is it wasn't geared for
20 this.

21 Q. Is that not a failure? But it happened.
22 But it happened.

23 A. Okay.

24 Q. So it failed, did it not?

25 A. Our procedures weren't set up for this.

1 J. NIERMAN

2 It's almost like asking me how did my phone fail to
3 do word processing if I have no app for word
4 processing. It's not set up for that.

5 Q. I'm going to ask you a question about the
6 Law Offices of J. Henry Nierman and J. Henry Nierman
7 the individual lawyer. Okay?

8 A. Okay.

9 Q. What procedures were in place at the Law
10 Offices of J. Henry Nierman to avoid scheduling New
11 York State subpoenas return dates on national
12 holidays?

13 A. I would pull up a calendar and see if the
14 date that I was plan on scheduling was on a national
15 holiday.

16 Q. Did you do that before transmitting
17 Exhibits 3 and 2?

18 A. I never transmitted Exhibits 3 and 2.

19 Q. So your signatures appear there, do they
20 not?

21 A. That's correct.

22 Q. Are there other instances in other cases
23 where Recovery of Judgment LLC mailed New York State
24 subpoenas to out-of-state deponents?

25 A. Not to my knowledge, no.

J. NIERMAN

Q. Are there any documents that would confirm that?

A. I don't have any documents on this case. All these documents are in possession of WAK Enterprise.

Q. Did the Law Offices of J. Henry Nierman retain any Recovery of Judgment LLC's documents?

A. If you're asking me personally, I think I've answered that, but there are some documents in my possession, yes.

Q. Included in any of those documents will there be instances where you mailed subpoenas to out-of-state deponents?

A. No.

Q. How do you know that?

A. I wouldn't have generated it nor do I think we have any cases like that, but I never generated any of these documents in cases where they were supposed to be generate. So to think that I would generate in a case where they were not supposed to be generated seems impossible, and that's why I say no.

Q. During the span of your representation of Recovery of Judgment LLC, how many depositions did you take?

1 J. NIERMAN

2 A. Probably a handful at most.

3 Q. What's a handful?

4 A. I don't remember ever taking a deposition of
5 a client where there was a court reporter that was
6 hired to take down testimony of --

7 Q. You said client. You meant debtor, yes?

8 A. Thank you for correcting me, yes. So I
9 don't recall a single circumstance where we actually
10 paid a court reporter to come in and take down
11 questions that I asked to a debtor. So the likely
12 answer to your question is zero.

13 Q. Okay. Have you ever taken a deposition or a
14 debtor exam, even without a court reporter, on behalf
15 of Recovery of Judgment LLC pursuant to a subpoena?

16 A. I think that probably there were informal
17 question sessions that I had with someone which would
18 not be under oath. Meaning, on the rare occasion
19 that someone would come in in response to a subpoena,
20 in lieu of actually swearing them in and asking them
21 questions, we usual just sit them down and ask a
22 handful of questions about where they're at and what
23 they can do to resolve the debts. That's really what
24 the objective was in sending a subpoena. It was not
25 to sit there and drill them and get information out

J. NIERMAN

of them.

So I think that the number of times that someone actually came into my offices in response to a subpoena was probably during the course of my five years in working there, less than ten times. And in every one of those circumstances it would lead to us trying to negotiate a settlement based on the means of the debtor.

Q. So you would issue a subpoena directing the recipient of the subpoena to come to your office to give testimony in furtherance of your effort to execute on a judgment and rather than conducting a deposition, you'd ask them some questions and you get a settlement agreement. Is that what you're saying?

A. More often than not, yes.

Q. In any of those cases, did any of those debtors appear with counsel?

A. I don't remember.

Q. Have you ever gave motion to the court to compel compliance for the subpoena?

A. No, not to my recollection, but I'm 99 percent sure that never happened.

Q. And in those cases where they did come to meet with you, where did you conduct those

J. NIERMAN

interviews?

A. My office.

Q. Which office?

A. The same office we would have been in at the time the situation arose. As I said, we changed offices several times.

Q. And you never hired a court reporter to take testimony during one of those interviews?

A. To my recollection, no. I don't remember ever hiring a court reporter to take any of this.

MR. NAHOUM: I want to take a two-minute break.

MR. NIERMAN: Do you know how much longer?

MR. NAHOUM: Not much. That's why we're taking a two-minute break.

(Whereupon a break was taken at 3:05 p.m.)

MR. NAHOUM: Back on the record.

BY MR. NAHOUM:

Q. Did there come a time when you bought out Mr. Porat's interests in Recovery of Judgment LLC?

A. There came a time when I obtained complete ownership without actually buying him out per se.

1 J. NIERMAN

2 Q. When was this?

3 A. I believe it was 2015.

4 Q. I'm sorry?

5 A. I believe it was in 2015.

6 Q. 2015?

7 A. Yes.

8 Q. Is that right?

9 A. That's my recollection.

10 Q. Okay. Did the Porats continue working at
11 Recovery of Judgment LLC after you acquired their
12 interests?

13 A. Yes. Not their interests. Shawn's
14 interests. Vera never held interests.

15 Q. Okay. Did both stay on?

16 A. Yes.

17 Q. In what capacity?

18 A. The same capacity.

19 Q. Okay. You said it wasn't a buyout. Explain
20 the transaction.

21 A. My recollection is that he executed
22 documents making me a hundred percent owner of the
23 company.

24 Q. No consideration?

25 A. No consideration.

1 J. NIERMAN

2 Q. Why did he do that?

3 A. You'd have to ask him.

4 Q. Why did you do that?

5 A. Because if I have a choice of owning
6 50 percent of something or a hundred percent of
7 something, I'll take a hundred.

8 Q. Did you make the offer to him, or did he
9 make the offer to you?

10 A. He made the offer to me.

11 Q. And what incentive did he get for that?

12 A. You would have to ask him.

13 Q. Well, it's a fact question. There's some
14 reason why the man did it. What was your
15 understanding of why he did it?

16 A. I don't recall what the reason was. I
17 certainly was doing a lot more for the company than
18 he was doing at the time. I don't recall if there
19 was negotiations where I was frustrated with the
20 share of distributions or a personal issue with
21 respect to operation of the company which led to it,
22 or some other factors which led to it. So I do know
23 that I didn't pay anymore, and that there came a
24 point in time when he said that he was going to
25 transfer his interests to me while at the same time I

1 J. NIERMAN

2 would maintain the same distribution, but I had
3 legally complete control of ROJ.

4 Q. So your testimony is because you were
5 dissatisfied with the way he was performing --

6 A. No, that's not my testimony. My testimony
7 is --

8 Q. So I don't understand. I don't understand
9 it. Clear it up for me.

10 A. My testimony is I don't recall what led to
11 it.

12 Q. Really?

13 A. Yeah, really.

14 Q. That's not a memorable event, sir?

15 A. No, it wasn't because we continued operating
16 exactly the same way. It was more of a paper
17 transaction than anything else. He still took the
18 same cut both with respect the distributions that
19 came during the course of operations and with respect
20 to closing the sale of the assets of the company. It
21 in no way affected my bottom line, so really it was
22 not something that's terribly memorably at all.

23 Q. Okay. So nothing changed except that you
24 acquired 100 percent ownership of the company, and
25 here under oath today you can't remember at all why

J. NIERMAN

he did it?

A. I'm telling you that he and I had an up-and-down relationship and that there were times that we had disagreements with respect to distributions and things of that nature, and I don't remember exactly what led to him deciding to give me that interest.

Q. Okay. I want to know a little bit more about the transfer of assets from Recovery of Judgment LLC to WAK.

A. Okay.

Q. What do you mean when you say a transfer of assets? What were the assets that were transferred?

A. The primary asset was control of the -- was their rights to the judgment -- to execute on the judgments that had been assigned to Recovery of Judgment under their control.

Q. What was the value of those judgments?

A. Market value or total value as far as what the judgments were worth?

Q. What was the portfolio value? The face value?

A. The face value? I'm sure it was in the millions. The actual market value though, typically

1 J. NIERMAN

2 judgments tend to sell somewhere between three to six
3 cents on the dollar.

4 Q. So you sold the -- the primary assets you
5 say are the judgments, the right to collect on the
6 judgments?

7 A. I think more than that what they were
8 looking for is I think they wanted the name because
9 the name Recovery of Judgment has been identified by
10 the public as being a company that excels in judgment
11 execution. It has a very good, strong presence on
12 Google, and a lot of countless emphatically positive
13 reviews, and the training that we provided. There
14 was extensive training --

15 Q. To whom? Training to whom?

16 A. To WAK. WAK employees.

17 Q. How many WAK employees did you train?

18 A. So most of training was actually done -- the
19 direct training by Vera. I was involved in teaching
20 the legal elements behind it. With respect to the
21 operation elements, she handled all of that. I would
22 say half a dozen.

23 Q. There were a half a dozen employees?

24 A. Something like that. That's my
25 recollection. Somewhere between four and eight. So

1 J. NIERMAN

2 I think half a dozen is a good estimate.

3 Q. To perform the same function that you and
4 Porats had been doing, yes?

5 A. Correct.

6 Q. And you trained them on how to do it in
7 compliance with the FDCPA? Is that what you're
8 saying?

9 A. Yes.

10 Q. Okay. What did you tell them?

11 A. It took three months. From the time that --
12 literally from the date that we signed the contract
13 until closing, several days a week, Vera would go
14 there or I would go there and train these individuals
15 on to how properly execute a judgment.

16 Q. Go where?

17 A. To their WAK offices.

18 Q. Where is that?

19 A. I don't remember where it was at the time.
20 It was a few blocks away from our office. This is
21 ranging from late November early December of 2016
22 until closing, which I said was in January or
23 February of 2017.

24 Q. I'm sorry?

25 A. Exactly during the period when all this was

1 J. NIERMAN

2 happening. Okay. It was during the period that --
3 I'll tell you this much. I'm remember signing this
4 agreement -- I'm 99 percent sure we signed this
5 agreement before that subpoena was sent out. That
6 the subpoena was definitely would not have been sent
7 out by WAK Enterprises because they did not take
8 control of anything with Recovery of Judgment. They
9 wouldn't have known now to create the subpoena back
10 in early December 2016. They were not involved in
11 performing any of ROJ's functions until after closing
12 which was at the earliest late January 2017, and
13 probably not until February of 2017. And during that
14 time period, which we're talking, I don't know,
15 somewhere around eight to 10 weeks, we spent hundreds
16 of hours of training the staff on how to properly
17 execute a judgment while being FDCPA compliant.

18 Q. Okay. In training, were they using
19 computers?

20 A. Yes.

21 Q. Your computers or their computers?

22 A. Their computers.

23 Q. So when did you transfer your computers to
24 WAK?

25 A. I don't think our computers were ever

1 J. NIERMAN

2 transferred to them. I think that -- I think that
3 our access to the cloud was transferred over to
4 representatives of WAK.

5 Q. When was that?

6 A. At closing.

7 Q. That was in -- what was the date again?

8 A. Late January or early February 2017. I do
9 not know if Vera set up an account for purposes of
10 training. I don't know how she did it because I was
11 not there when she was doing most of her training of
12 WAK Enterprises. So I don't know if they had an
13 account. My role in training them was really just
14 giving them an education of the law, and what the Dos
15 and Don'ts of the FDCPA are and what they -- I had to
16 make sure to be clear about -- and also just a
17 generally understanding of how the legal system works
18 so they can understand the distinction between a
19 state judgment and a federal judgment, the interest
20 that accrues on each -- I'm talking too fast. I
21 apologize. But a general legal understanding is it
22 what I was trying to provide.

23 Q. When all the judgments were signed over to
24 WAK, did you sign any consent to change attorney?

25 A. I don't recall signing that. I'm trying

1 J. NIERMAN

2 to -- I'm trying to think about what happened at the
3 closing. That's an interesting question how we did
4 that or whether there was a global -- I was not
5 involved in drafting of these documents. And I also
6 know that the actual judgment that we had was the
7 least of their interests.

8 In WAK Enterprises, my understanding was at
9 the time that they were doing this that they -- they
10 had their own business where they had their own
11 judgments that they would -- that they wanted to
12 execute on and it was too costly for them to pay
13 someone. They didn't like losing that much money.
14 So really for them the training was the essence of
15 what they were getting -- of what they were getting
16 out of this deal. And to boot, to the extent they
17 could successfully execute on any judgments that we
18 had, great.

19 So if I was the one drafting the documents,
20 I probably would have had a global transfer of all
21 the assets, including the judgment.

22 Q. My question was about a consent to change
23 attorney, right. We understand what a consent to
24 change attorney is. It's a document that gets filed
25 with the court and notifies the world who the

1 J. NIERMAN

2 attorney of record is, right? We understand that?

3 A. I do understand that, yes.

4 Q. Did you sign any consent to change attorney
5 when you transferred the assets of Recovery of
6 Judgment LLC to WAK?

7 A. I don't remember. It was four years ago and
8 there was a lot of documents that we were signing.

9 Q. Are you still attorney of record on
10 judgments that Recovery of Judgment LLC is
11 collecting?

12 A. I don't believe so, no.

13 Q. Do you get any mail as the attorney of
14 record on any of these matters?

15 A. No, no. I don't get anything on that.

16 MR. NAHOUM: Thank you. I have no more
17 questions.

18 THE NIERMAN: Great. I just want to
19 ask you, first of all -- Barry, do you have
20 any questions for me?

21 MR. NAHOUM: I think Barry is walking
22 the dog.

23 MR. NIERMAN: I think he's good.

24 We are scheduled to have a conference
25 at 10:30 on Thursday; is that correct?

1 J. NIERMAN

2 MR. NAHOUM: You can take -- whatever
3 administrative issues you have, you can take
4 it up with Evan or Evan's office.

5 THE WITNESS: I want to ask you
6 because, you know, this whole thing -- this
7 whole deposition was pushed back -- we can
8 go off the record on this.

9 (Whereupon the deposition concluded at
10 3:20 p.m.)

11 --oo0oo--
12
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J. NIERMAN

STATE OF _____)

)

COUNTY OF _____)

I, JOSEPH NIERMAN, ESQ., the witness
herein, having read the foregoing testimony of the
pages of this deposition, do hereby certify it to be
a true and correct transcript, subject to the
corrections, if any, shown on the attached page.

JOSEPH NIERMAN, ESQ.

J. NIERMAN

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name:

Dep. Date:

Deponent:

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
9	—	—	—	—
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Signature of Deponent

Subscribed and sworn to before me

This __ day of _____, _____.

(NOTARY PUBLIC) MY COMMISSION EXPIRES: _____

J. NIERMAN

C E R T I F I C A T E

STATE OF NEW YORK

COUNTY OF NASSAU

I, Leonora L Walker, a Notary Public, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; that reading and signing was requested; and that I am neither counsel for or related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 5th day of October 2020.

My commission expires May 17, 2024.



NOTARY PUBLIC IN AND FOR THE

STATE OF NEW YORK

Notary Registration No. 01WA6109670